

(Re)Making Indigenous Water Worlds: Settler Colonialism,  
Indigenous Rights, and Hydrosocial Relations in the Settler Nation  
State

by

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## Abstract

This dissertation examines several sites of conflict between Indigenous and non-Indigenous peoples over water and water rights in Canada, from the 19<sup>th</sup> century up to current articulations of environmental policy and land rights. Through examination of a selection of public policy, land rights decisions, grassroots activism, and Canadian and Indigenous fiction and non-fiction, I probe relationships to water that have structured and limited the legibility of Indigenous rights in Canada. I track a history of settler colonialism through the lens of water, querying whether water offers a productive site that might challenge the current land-based constraints of colonial legal and policy frameworks that have led to what are often irreconcilable relationships between the settler state and Indigenous peoples.

Through Indigenous legal orders, social, cultural, and political expression, as well as strands of materialist and environmentalist Western philosophy that focus on water, ontology, and narrative, I explore the limits and potential for decolonial approaches to water governance that might better support the inherent rights of Indigenous peoples. Using an interdisciplinary methodology, I read public policy and land rights decisions in dialogue with settler and Indigenous literatures and community action in order to understand the often-competing worlding practices that materially, socially, subjectively, and figuratively construct settler and Indigenous approaches to water—what I am calling settler and Indigenous water worlds. Specifically, I analyze four sites of conflict and their various representations where competing laws, philosophies, and social registers of water come up against one another: the 19<sup>th</sup> century establishment of a liberal order in the Trent

Severn Waterway, and its expression in early settler life writing and environmental policy; the mercury pollution of the English-Wabigoon River Systems in Treaty 3 Anishinaabe territory, and the ironic representation of late liberal environmentalism in M.T. Kelly's *A Dream Like Mine*; the James Bay Hydroelectric conflict, and the political response of the Grand Council of the Crees, as well as the conflict's figurative reimagining in Linda Hogan's *Solar Storms*; and Haudenosaunee and settler relations in Grand River territory in Southern Ontario, and the impetus to engage these relations through the historic treaty, the Two Row Wampum.

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## **Preface: Why Water?**

This project begins and ends along the Grand River in southern Ontario. At the risk of sounding arrogant, this project begins there, with me, and with my relationship to the waters I have grown up along. I start here in order to understand why it is I turn to water as a site of inquiry in this dissertation—why it serves as a useful point of departure to think through Indigenous rights, legal orders, and ontologies, settler colonialism, infrastructure, pollution, and the relationships that water lays bare in the context of the settler state. I start with my own relationship to the Grand River in order to consider the fundamental question, “why water?”

About 25 kilometres south of Hamilton, just over an hour from Toronto, I grew up in the small part-rural, part-suburban town of Caledonia along the banks of the Grand River. With its source flowing out of Wareham, Ontario, a place I have never been, south to Fergus, Kitchener, Waterloo, Cambridge, Brantford, through my hometown of Caledonia, and further south to Cayuga, Dunnville and Port Maitland, where it empties into the north shore of Lake Erie, the Grand River was a constant, if taken for granted presence, in the eighteen or so years of my life that I lived in this watershed. It was the river we crossed almost daily to get to the other side of town where my grandmother lived. It was the water I swam in only a handful of times, warned of rusting farm equipment sunk on its bed, and the years of pollution from industrial activities up and down its banks. We fished there, but would not dare to eat its fish. We sometimes canoed or boated down it, taking in the beauty of its still waters, its tree-lined shores. And when I was a bit older, we parked alongside it, smoked, and laughed with friends. My

relationship with the river was, in many ways, formative, if only a superficial engagement with these important waters.

The Grand River also cuts through the Six Nations of the Grand River reserve, the largest reserve in Canada and the territory of the six nations that comprise the Haudenosaunee Confederacy—Mohawk, Cayuga, Seneca, Onondaga, Oneida, and Tuscarora. Six Nations lies straight across the river of a number of the above mentioned non-Indigenous communities. Intended, under the Haldimand Treaty of 1784, to include “six miles deep from each side of the river beginning at Lake Erie and extending in that proportion to the head of the said river” (Haldimand Deed, 1784), Six Nations now occupies only a fragment of the territory promised along the Grand River. From many of my familiar haunts on the river’s banks, you can see Six Nations’ territory on the other side, with the river both separating our communities, and now I realize, also revealing the integral relationship between them.

It has only been in recent years that I have learned that the Grand River is intended to be the primary source of drinking water for the people of Six Nations. Caledonia’s water, on the other hand, comes from the larger municipality of Hamilton, pumped through dozens of kilometres of pipes, from Lake Ontario, through several treatment stations, before reaching our taps. The tap turns on, and out flows water from a watershed that I am yet more disconnected from; Lake Ontario, its industrial Hamilton harbours, the length this water travels, may have never even entered my mind in the years that I spent in Caledonia. And so I have to wonder if my integral, yet superficial relationship with the presence of the Grand River in my life is delimited by the fact that I do not consume its waters. Indeed, I have to wonder if my relationship with water

generally has been that of superficial consumption, disconnection, removal, and abstraction. The pollution in the Grand has been a point of interest or a momentary caution, a joke even, but was never exactly a fact of my life. My relationship to the river has largely been merely surface level, and hardly within the waters themselves.

The fact of water's consumption, however, is that we do not ingest water merely through the act of drinking. We do not experience a watershed simply through swimming in it, or submerging ourselves in its depth. What I realize now, what a turn to water has allowed me to think through, is the fact that I was always a part of the Grand River watershed. Its waters were in the air I breathed for 18 years. It was the clouds that swelled and rained on my home, that soaked my clothes, pooled in our backyard. My body has to be at least some part, Grand River. While I don't want to overstate water as a metaphor for connection and relationality—yet, as the textual examples I draw from show, this is a metaphor we can rarely avoid—I cannot deny the interconnection incited by water's presence, its flow, and consumption. Water is the always already of relationality. Always already relational; always already connected and connecting.

And while I shy away from this thinking and its risk of further abstraction from the watershed and the politics that surround it, this is perhaps a useful place to begin. I have been concerned with the land rights issues, the conflicts and disputes that demarcate relations between Six Nations and the surrounding settler communities, namely my hometown of Caledonia, since these issues hit a boiling point in 2006, when Six Nations reclaimed a parcel of land on the border of Caledonia, and residents of Caledonia responded with anger, protests, and often-times, racism. Since the beginning of my university education in 2007, I have had the privilege of investigating these issues—those

that I had initially been ignorant of—through a critical lens, and with the guidance of Haudenosaunee Elders-in-residence and Indigenous Studies faculty at McMaster University. With this help, I came to learn about the complicated histories of my hometown and the perspectives of the Haudenosaunee, those which have largely been negated by settler society, and which necessitated their land reclamation. Education incites a new found passion for politics, and the impetus for change and attention to these complicated histories; but my disassociation from the town in which I grew up, a place I never quite felt a part of, and certainly after the responses I witnessed to the 2006 land reclamation by many residents, a place I did not want to be a part of, ensured that I was always able to distance myself from these histories, and the relationships that have transpired in this territory.

My attention to water in recent years returns me to this territory in undeniable ways. The Grand River watershed is the watershed that I come from. It is the river that implicates me in the histories and ongoing relations of this region. I once viewed the river largely as the space that separated the lands of my hometown from those of the Haudenosaunee, a space that I could traverse intellectually but which also excluded me from too deep of an involvement in the contentious histories and politics that I wished to disassociate myself from. In turning to water, in using it as a lens to investigate a number of distinct conflicts between Indigenous peoples, the settler state, and settler society, I am beginning to understand that the water between my community and Six Nations is not a space that can be glossed over; it is *the* space that implicates us in an ongoing relationship with one another; it is *the* space that demands attention to both how we engage with this space itself and what that engagement means for our relationships to each other. It is the

space that I am undeniably apart of, and which necessitates my attention and responsibility.

This project is largely about investigating the various ways that this space, and spaces like it, have been constructed and organized under the conditions of settler colonialism, and how this construction and organization has affected the rights of Indigenous peoples, their relationships to water, and their abilities to govern themselves within their watersheds, and in ways that stem from their distinct worldviews. Notably, and as my project turns to the settler subjectifications that perpetuate the enactment of settler colonial constructions of Indigenous waterways, it is also about how these constructions and the forms of subjective identification they give rise to foreclose upon the meaning of settler relations to water, limiting settler worldviews as well, and what water can mean under the conditions of the settler state. This project is importantly about how Indigenous theorists, authors, politicians, and artists have understood this space, and resisted settler colonial constructions of Indigenous waters. But at its core, this project is interested in what the space of water demands of settler and Indigenous peoples alike—the relationality that it fosters, and that cannot be denied no matter how hard we try, or how different we conceive of it. And so at the most personal level, this project is really about how I understand my own responsibilities to water and to the people I share it with, about learning how to navigate the complex differences of this space, learning how to read and understand different approaches to water, or to reckon with my own misunderstandings and misreadings. And so in beginning this project with the question of “why water?” the simplest answer is because water makes the demand of this engagement—water is both the site of investigation and the site that demands

investigation, the site of relationality, and the site the demands attention to relationality.

While I am largely, but not entirely, absent from the chapters that follow, I begin here,

with the Grand River, with water, and with myself, in an effort to respond to this demand.

## **Introduction: (Re)Making Indigenous Water Worlds: Settler Colonialism, Indigenous Rights, and Hydrosocial Relations in the Settler Nation State**

At the time of writing this dissertation, 80 First Nation communities across Canada south of the 60<sup>th</sup> parallel are under 31 short-term and 96 long-term Drinking Water Advisories, the latter meaning that the advisory has been in place for more than a year, and in many instances, for decades (Government of Canada, “Drinking Water Advisories”). Shoal Lake 40 First Nation straddling the border of Manitoba and Ontario, for example, has been under a boil water advisory for nearly 20 years, the result of dirty water being diverted away from Winnipeg via a dam that ensures clean water is filtered into the city on the one side, while contaminated water flows to the residents of Shoal Lake 40 reserve on the other (Lorraine 2016, n.p.). At the beginning of 2017, the Provincial government finally committed to cleaning up and assessing the full effects of the mercury contamination of the English Wabigoon River system that flows through Grassy Narrows (Asubpeeschoseewagong) First Nation and White Dog (Wabaseemoong) Independent Nations in Northern Ontario—a contamination which took place in the 1960s and 70s, affecting generations of the Treaty 3 First Nations, over 90 percent of which have tested positive for mercury poisoning. South of the border, after months of one the most successful peaceful protests in American history, garnering international support and resulting in millions of dollars in divestment from energy extraction, members of the Standing Rock Sioux tribe and water protectors across North America were forcibly removed from their camps in Standing Rock, North Dakota, as the Dakota Access Pipeline pressed forward with plans to drill under the Missouri River, the water

source of the Sioux Standing Rock Reservation and the United States' longest river system. These are a few examples among countless, which illustrate the ways in which water carries the evidence of settler colonial violence, connecting Indigenous territories, reserves, communities, and peoples to the worst by-products of energy extraction, industrialization, entitlement, and capitalism. Territorial boundaries and land title mean little in relation to the waters which ensure the effects of pollution are always felt downstream. Unequal access to clean drinking water, the disproportionate exposure to contaminated waters and food sources, and the ensuing threats to health and culture, are actively produced and reproduced under settler colonialism. Water emphasizes these effects, ensuring that they are not bounded or fixed in place, and that settler colonialism is as fluid and mobile as the waters its policies and processes effect.

And yet water is a site that should be read as highly ambivalent, with its effects often paradoxically carrying both the structures of settler colonialism and creating the conditions for the maintenance of Indigenous cultural knowledge and political resurgence. Indigenous worldviews, legal, and political orders have consistently highlighted water as an integral aspect of culture, community, health, and nationhood, not only at the level of materiality, but for its spiritual and political significance and its role as a co-constituting aspect of Indigenous life, cultural continuance, and for its connections to place and belonging.<sup>1</sup> Despite the ongoing effects of settler colonialism, water remains a key site of Indigenous culture, politics, and for the assertion of

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<sup>1</sup> While I do not intend to overgeneralize Indigenous perspectives on water here, numerous studies, along with the perspectives of Indigenous scholars, writers, community members, and activists across a range of geographic and nation-specific sites centre the significance of water within their Indigenous cultural and political orientations. See for example, Bedard 2008; Lawless et al. 2013; McGregor 2012; Simpson 2011; Von der Porten 2012; Walkem 2007; Wilson 2014; and the work of the Mother Earth Water Walkers. The nuances of some of these perspectives will be further explored throughout this dissertation.

Indigenous rights and sovereignty. In their introduction to a recent special issue of the journal *Decolonization: Indigeneity, Education, and Society* on Indigenous peoples and the politics of water, editors Melanie K. Yazzie and Cutcha Risling Baldy assert how in recent years, “Indigenous people are (re)activating water as an agent of decolonization, as well as the very terrain of struggle over which the meaning and configuration of power is determined” (2018, 1). From conflicts over the Mississauga Anishinaabe’s wild rice harvesting rights at Pigeon Lake, to the ongoing struggle of the Prophet River and West Moberly First Nations to stop the building of the Site C Dam in British Columbia, to the numerous Indigenous nations and their water sources, in the path of the Trans Mountain Pipeline Expansion Project between northern Alberta and southern British Columbia, water is, in many ways, increasingly central to the struggle for Indigenous rights in Canada and beyond.

With water an ongoing and important site of struggle for Indigenous rights, the Canadian state has acted to limit interpretations of Indigenous peoples’ rights generally, and their water rights more specifically, to their legibility under settler common law. At best, Canadian Indigenous rights discourse centers land as a means of reconciling relationships between Indigenous peoples and the Canadian state, attempting to appease Indigenous rights claims with capital stakes in their own resources and territories. Water, through its tributaries and run off, its flooding and depletion, however, ensures that land rights in Canada are never settled, with land-based policies, Western rights discourse, and the laws that uphold them ultimately inadequate in fully reckoning with the ongoing material dispossession of Indigenous peoples. Thus, in this dissertation I explore how thinking Indigenous rights through water offers an important lens through which to grasp

the real stakes of settler colonialism in the Canadian nation state.<sup>2</sup> To put this another way, foregrounding water, given both its materiality and cultural and political significance in Indigenous peoples' self-determination, opens up possibilities for Indigenous rights in Canada to move beyond the liberal constraints of Western common law, with its emphasis on fixity, certainty, and private property, and to be grounded instead within Indigenous conceptions of place, culture, history, peoplehood, and belonging, and the legal orders that flow from and through these.

### **Research Questions**

This dissertation emerges out of the judicial and political limits of Indigenous rights in the settler nation state. Clogg, Askew, Kung, and Smith write, "When Europeans arrived in what is today Canada, they settled in lands governed by Indigenous nations according to their own legal traditions, land tenure systems, and governance structures. The Supreme Court of Canada has recognized that for long before Europeans arrived in Canada, Indigenous peoples occupied the land in 'organized, distinctive societies with their own social and political structures'" (2016, 230). Despite this recognition at the level of Canada's highest court, Indigenous rights in Canada remain a battleground for

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<sup>2</sup> I use this preposition 'in' as 'in the settler state,' or 'in the context of the settler state,' throughout this dissertation, not to reinforce the confines or powers of settler colonialism, but to acknowledge that this project is predominately about grappling with the ways that Indigenous water law is often enclosed and encapsulated by the settler state-as-institutions-of-law-and-governance. While this project is also attentive to questions of legibility, ontology, and the possibilities for a decolonial future as it relates to the re-making and re-assertion of Indigenous water laws, it is largely concerned with how these water worlds might emerge, and how they are emerging now, despite the constraints of settler colonialism. Further, by marking the current reality in which we indeed are 'in' the context of the settler nation state, I hope to open this project up to questions of relationality, and the relational worlding of water that might happen despite this overdetermining context.

meaning, interpretation, and legibility. Like many of the Indigenous scholars, writers, and activists I draw from, I argue, first, that in order for Indigenous rights to be considered in ethical, reconcilable, and decolonized ways in relation to the settler state, they must be understood beyond the jurisdictional confines of state sanctioned settler colonial common law with their meaning firmly grounded in the Indigenous worldviews, relationships, and social relations that arise through long-standing assertions of Indigenous law and legal orders. If the status quo is not to be reproduced, state interpretations of Indigenous rights in Canada must contend with the meaning of Indigenous sovereignty, laws, and ontologies, and the limitations of the state's own juridical models of sovereignty grounded in Western law, private property, and presumed ontological supremacy.

Secondly, where Indigenous conceptions of land tenure, governance, and self-determination are most often in opposition to the pre-existing political and judicial terms of engagement so entrenched within dominant Western liberal discourses of land, ownership, and Western property regimes, I assert that water, rather than land, offers a fundamental challenge to the attempted delimitation of Indigenous rights within the terms of the settler colonial nation state. Not only are Indigenous water rights not adequately addressed through historical and contemporary settler rights-based discourse, but water rights in the settler state more generally have been glossed-over, mismanaged, and neglected under the Canadian Constitution, Provincial, and Federal law, illustrating both the prevalence and limitations of land-based thinking in the settler state (Phare 2009, 21-23). Where water has been bracketed, neglected, or relegated to land-based discourse to constitute settler frameworks of land tenure premised on private property and the legal positivism that upholds them, Indigenous cultural, political, and legal conceptions of

water—all of which are necessarily interconnected—offer vastly different approaches to land tenure and responsibility. Thinking Indigenous rights through water shakes up self-evident assumptions embedded in Western legal orders while illustrating the necessity of engagement with Indigenous peoples’ inherent rights, which stem from their distinct worldviews in which water is a central and living agent. Water emphasizes both the ways in which settler and Indigenous worlds are intertwined—connected through the waters that run through them—and also how these waters are ontologically experienced and made meaningful in different ways. This dissertation explores how water thus serves as the site through and around which to revisit relationships between settler and Indigenous peoples, and for the rethinking of approaches to Indigenous rights in Canada.

*Legibility, Incommensurability, Relationality*

My inquiry is premised on two fundamental and interrelated questions: I ask, how can Indigenous peoples’ inherent rights, and specifically their inherent rights to water, be made *legible* in the context of the settler state—that is within the state powers, legal, political, educational, and cultural institutions, and the worldviews and discursive structures that it encompasses? By extension, how might thinking of Indigenous rights issues through water shift the terrain, the terms of negotiation, and the social relations that structure the readability of Indigenous rights in Canada? What kind of pressures does thinking with and through water put on taken for granted discourses of land tenure and what alternatives does this thinking offer in highlighting the impetus for the legibility Indigenous peoples’ inherent rights? Here, I mean legible, in terms of that which is “comprehensible,” intelligible,” and has a “readily discernable nature or significance”—

that which can be read (Oxford English Dictionary). I do not intend to imply, however, that this legibility necessarily come easily or naturally to the settler state, its institutions, and actors. Further, my use of legible here is also not synonymous with that which is inevitably translatable into the dominant settler language or order. Speaking on translation and its function in relation to differently positioned worldviews, John Law suggests that “to translate is to make two worlds equivalent”; however, he notes that “since no two worlds are equivalent, translation also implies betrayal” (2009, y144). In other words, a translation always implies an uneven relation wherein attempts are made to translate one language into the language of the other. But because translation is premised on the relationality between the different sites of translation—because it is “about making equivalent” but also “about shifting . . . about moving terms around, about linking and changing them” (144)—Law importantly notes, “translation is always *insecure*, a process susceptible to failure. Disorder – or other orders – are only precariously kept at bay” (145). To make Indigenous rights legible on their own terms is thus to encounter, unsettle, and undermine the translative coercion of the settler state, revealing its insecurities and failures.

Legibility implies a committed reading, rather than a simple translation. The question of legibility pivots on the related question of how the inherent rights of Indigenous peoples can be read and understood on their own terms in the settler state—and in ways which are often incommensurable with or irreconcilable to a Western liberal interpretation of rights. This means making legible the very incongruences between Western rights discourse and Indigenous peoples’ interpretation of their inherent rights. It also means making legible the potential *illegibility* of inherent rights under state judicial

constraints, as inherent rights flow from Indigenous peoples' distinct worldviews and legal orders that often exist in opposition to state rights discourse. Legibility—to learn to read, and to recognize the limits of one's own reading practice—implies a commitment to unlearning and relearning, to reconceptualising, respecting boundaries, and seeing the limits of one's own epistemology and ontology.

Legibility, however, is not only about misreading, or misunderstanding; it is also about power and legitimacy, and the settler state's power to *make* Indigenous rights illegible and thus illegitimate. As I will explore through my sites of conflict below, to render Indigenous rights and relations to water as illegible is to contain them or negate them; it is to re-interpret them or romanticize them as mere cultural expression; it is to subordinate them, construct them as inferior, to make them illegal, or actively disavow and destroy them. Significantly then, to engage with the problem of legibility in the settler state also means reading and reckoning with the necessity of the jurisdictional powers of Indigenous law and governance over their waters and also over waters that are necessarily shared; it means reckoning with what the settler state and settler subjects must give up or relinquish in order to decolonize water on Turtle Island.<sup>3</sup> Engagement with the problem of legibility moves us away from a liberal politics of recognition, wherein Indigenous rights must be made recognizable, or translatable to Canadian common law, and instead calls for the readability of Indigenous rights as they have emerged through “their own legal traditions, land tenure systems, and governance structures” (Askew, Kung, and Smith 2016, 230). What could be called the problem of legibility thus

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<sup>3</sup> I use the term Turtle Island when referring to the Indigenous territory now known as North America. While the term is largely derived from Haudenosaunee and Anishinaabe Creation stories, it has taken on a broader significance in Indigenous rights movements and represents a politics of naming for lands that belonged to Indigenous peoples prior to the impositions of settler colonialism

becomes a task for the settler state, and for non-Indigenous people in Canada as they reckon with the nature and significance of Indigenous peoples' inherent rights, reconciling themselves, their worldviews, and their own legal orders with the inherent rights of Indigenous peoples.

My concern with legibility here is closely aligned with Eve Tuck and Edward Yang's notion of *incommensurability* in their pivotal essay, "Decolonization is Not a Metaphor"; however, my use of legibility marks, perhaps, a different kind of project than that outlined by Tuck and Yang. Tuck and Yang write, "To fully enact an ethic of incommensurability means relinquishing settler futurity, abandoning the hope that settlers may one day be commensurable to Native peoples. It means removing the asterisks, periods, commas, apostrophes, the whereas's, buts, and conditional clauses that punctuate decolonization and underwrite settler innocence" (2012, 36). The authors further write, drawing on Fanon, "Incommensurability is an acknowledgement that decolonization will require a change in the order of the world" (36). For Tuck and Yang, "decolonization is not a metaphor . . . it is not a metonym for social justice, but a change in the material conditions that undergird the settler state and their ongoing colonization of Indigenous people's lands, waters, and ways of life" (21).

I follow Tuck and Yang's emphasis on the importance of incommensurability within decolonizing projects—on "what is irreconcilable within settler colonial relations" rather than on that which is reconcilable (4). Like Tuck and Yang, I am interested in a break in the organizing logics and material conditions of settler colonialism, rather than a kind of compromise. But where water demands a consideration of that which is relational between Indigenous and settler worlds, I remain committed to understanding how this

relation itself might be decolonized. While I do not intend to affirm a “settler futurity,” which Tuck and Yang assert is incommensurable with Indigenous decolonial projects, I undertake here what I identify as a decolonial thought experiment in order to consider how to live relationally with water *now* within lands where we are already “living within Indigenous sovereignty,” but which are overdetermined by the jurisdictional constraints of the settler state (Nicoll 2004, qtd. in Mackey 2016, 129). Legibility returns me to the demand of the relation, what Dorries and Ruddick, drawing on Bignall, call “the problematic unity of coexistence” (2018, 6). While incommensurability remains an important consideration for this relation, it is the relation itself where I ultimately aim to locate decolonial potential. Where legibility is produced and delimited through systems of power, water forces a reckoning with legibility across settler and Indigenous water worlds—its relational presence demands the readability of Indigenous peoples’ inherent rights, their hydrosocial relations and legal orders, and the pressures they put on waters that necessarily flow in relation between Indigenous and settler worlds.

My second and related question, then, is what it has meant and what it could mean to live relationally with water in a settler colonial nation state such as Canada? At the heart of both of these questions is what it means to exist relationally in a settler state, in law, and with rights when worldviews are incommensurable in ways that often lead to violence and dispossession. What does it mean to exist relationally in a place where legibility is confined to a matter of cultural difference, and at worst violently erased? While I will expand on the concept of “worlding” below, my research questions prompt me to consider the distinct worlds—the complex ontological perspectives—that are comprised by and through our different engagements with water and the system of rights

that arise through these engagements. How do certain interpretations of rights around water and the laws that uphold them construct material worlds in their image? How have they limited, and in many instances, actively worked to undermine and even destroy the possibility for the enactment, making, and remaking of Indigenous worlds? What worlds have been and could be possible through reckoning with the legibility of the inherent rights of Indigenous peoples, Indigenous legal orders, and assertions of sovereignty, particularly as they pertain to water? In raising these questions about legibility and relationality, I am fundamentally concerned with the question of what is and what could be legible as law on lands that are both overdetermined by settler colonialism, and where enactments of Indigenous land and water tenure are actively being remade within and against these constraints.

Through an interdisciplinary analysis of selected discursive articulations of land, water, law, and Indigenous rights in Canada, I explore the production of and relationship between Indigenous and settler *water worlds* as they are made and remade within and against the confines of the settler colonial nation state. As land and its settlement continues to play such a fundamental role in the development of the nation, I explore how water has been figured within the settler state and its settler subjectifications. I ask, what are the ways in which water has been relegated to a simplified extension of land-based discourse within Canadian Indigenous rights policy and what are the effects of this? What are the ways that settler subjects have enacted and amplified these land-based limitations? Subjective dynamics, the logics of settler possession and their corresponding elements of settler desire and self-delusion are integral in understanding the subjective processes underpinning the enactment and perpetuation of settler colonial water worlds—for

understanding how settler colonial water worlds are embodied and projected on the ground by settler subjects in distinct historical moments. In this project's commitment to critique, I attempt to account for the structural, institutional, the large-scale historical processes, as well as their extension into the waters of Turtle at the subjective level—the subjective dimensions that are often complicit in their well-meaning intentions, and which make settler colonial water worlds so hard to alter or unmake. Alternatively, by exploring the historical, political, and legal perspectives of specific Indigenous nations, communities, and writers, I examine how water has been figured in Indigenous cultural, political, and legal thought, practice, and community action. How do Indigenous legal orders and sovereignty claims frame water rights for Indigenous peoples and what kind of material worlds does this reframing aim to construct?

Cree/Gitksan legal scholar Val Napoleon asserts that we “cannot assume that there are fully functioning Indigenous laws around us that will spring to life by mere recognition. Instead, what is required is rebuilding” (Napoleon 2013). Following Napoleon's comments here, my aim in this dissertation is ultimately to explore some of the conditions required to begin rebuilding or remaking Indigenous water worlds in the settler colonial context. Put another way, if state interpretations of Indigenous rights discourse, those which are rooted in Western property regimes, and colonial common law have actively unmade Indigenous water worlds, correspondingly limiting the legibility of Indigenous peoples' inherent rights and the legal orders from which these inherent rights are derived, what kinds of conditions are required for their remaking? What are the ways in which Indigenous peoples have resisted the imposition of settler colonial water worlds? And what is the potential to constitute these distinct, often oppositional worlds

relationally? While I do not intend to circumscribe what this remaking has and will look like, as each of my sites of analysis show, it involves the fostering of the conditions for the assertion and resurgence of the Indigenous legal orders and hydrosocial relations that give meaning to Indigenous peoples' inherent rights to and self-determination over their waters. Tuck and Yang assert that "decolonization in the settler colonial context must involve the repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted; that is, all of the land, and not just symbolically" (7). To be clear, my focus on a decolonial relationality in this project is not simply a call for the recognition and respect of an ontological plurality on colonized lands. Rather, my project is concerned with what this repatriation is up against under the jurisdictional powers of the settler state, the concrete and material shift in power that it would require, and what this might look like in relation to the waters that flow between Indigenous and settler understandings and enactments.

## **Methodology**

The aim of this project is primarily to examine a selected history of settler colonialism in Canada through attention to water. Put another way, I mobilize water as a primary site of analysis and lens for inquiry in order to understand the force of settler colonialism, as well as its limits in relation to the rights of Indigenous peoples in Canada generally, and their inherent rights to and relationships with water more specifically. Through a reading of water's presence, history, and constructions in the settler colonial nation state, I consider how Indigenous rights, hydrosocial relations, and legal orders around water have become subject to and overdetermined by the logics of settler

colonialism—how settler colonialism governs Indigenous peoples’ relationships to their waters. I examine how settler water worlds become constructed, and how their construction, the laws, logics, and ontologies that underpin them, work to deconstruct Indigenous water worlds. Relatedly, I am concerned with the ongoing relationship between settler and Indigenous water worlds, and what is required for Indigenous water worlds to persist, be remade, and proliferate within and against the context of settler colonialism.<sup>4</sup>

I pursue these aims by considering how water is registered and engaged through several sites of conflict and representation that reveal water’s tensions and paradoxes, and the social, cultural, and political milieu through which it is engaged and constructed. More specifically, I investigate these questions, probing the limits of land-based discourses and the potential for water to challenge the settler colonial constraints of Indigenous rights, as they are represented in the work of Canadian and Indigenous literatures and life writing, public policy, superior court and land rights decisions, Indigenous legal orders, and community action—forms of representation and action that are varied and disparate, but which are held together by their relation to place and watersheds. Grounding my analysis in three distinct, but entangled watersheds—the Lake

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<sup>4</sup> While I do consider the relational co-constitution of settler and Indigenous water worlds, it is true that this dissertation is largely concerned with the differences and distinctions between settler and Indigenous approaches to land, water, rights, law, and social relations to the environment. Much of my analysis is indeed premised on often-oppositional modes of “worlding.” Through my different case studies and sites of analysis, the distinctions between settler and Indigenous ontologies and hydrosocial relations are drawn out and emphasized. While I make committed attempts below to open up space for myriad conceptions of Indigenous sovereignty and rights assertions, expressions of law, and political engagement, my emphasis on difference risks positioning Indigenous ontologies and epistemologies as always in opposition or contrast to Canadian modes of sovereignty, law, conceptions of rights, and the relations to water that they foster. I do not intend to construct Indigenous difference in such a way that suggests there is only one way to be or respond as *Indigenous*. As Eva Mackey notes, “all Indigenous claims are political claims” (2016, 144), and as I argue throughout, thus need to be engaged on their own terms in whatever form they might emerge in relation to the Canadian state.

Ontario, St. Lawrence, and James Bay watersheds—I explore the lineage of Canadian land rights and how water has been figured within the settler national imaginary, as it has been expressed and produced through various settler textual and material sites and discursive forms; I examine the material worlds constructed through this Western rights discourse and its effect on the inherent rights of Indigenous peoples.

In reading policy and legal documents alongside literary representations of settler Canada, I ground my comparative analysis in the material implications, the on-the-ground effects of discursive structures, that can be read across a range of Canadian cultural and political production. I then put these settler articulations of land, land rights, Indigenous rights, and water in dialogue with perspectives expressed through Indigenous literature, law, philosophy, and community writing, in order to parse out varying and competing social relations to water that put Indigenous rights policy in Canada in tension with the inherent rights of Indigenous peoples. While my investigation into the remaking of Indigenous water worlds is delimited by my sites of analysis—indeed, as I will elaborate below, there is no singular Indigenous “world” to be remade, and its remaking always already occurs in relation to the ongoing “worlding” projects of settler colonialism—my aim is to probe the limits of Indigenous rights policy that has consistently failed to reckon with the worldviews of Indigenous peoples and the inherent rights that flow from these worldviews. I conclude my dissertation by considering the requirements for a decolonized relation to emerge between waters that are constituted in starkly and often incommensurable ways, but which demand a consideration of the ways in which they are necessarily shared.

## *Discourse Analysis and Indigenous Methodologies*

Given the breadth and diversity of my sites of analysis, I engage several research methods in order to deconstruct and interpret what could broadly be defined as a provisional cultural history of water in Canada as it relates to settler colonialism and Indigenous rights. Mobilizing an interdisciplinary methodology that draws on discursive analysis, critical historiography, and an engagement with Indigenous methods allows me to read life-writing, public policy, land rights decisions, and settler and Indigenous legal assertions and literatures alongside one another. I mobilize these mixed methods in order to understand how figures and genres of narrative, such as fiction, non-fiction, and creation stories are at work, informing law, policy, activism, and ultimately the material constructions of both settler and Indigenous water worlds. Building on extensive work in Settler Colonial, Indigenous, and Literary Studies, with strands of Cultural Studies, Critical Geography and Political Ecology, I investigate the various and varied ways my textual sites work toward the formation of certain kinds of worlds, how they shape and constrain subjective and collective identities, and how the formation of these identities upholds or challenge material worlds and the political assumptions that support them. Further, I am interested in how different discursive forms and sites of analysis work toward, engage, or further obfuscate the problem of legibility in relation to Indigenous rights, legal orders, and hydrosocial relations.

Foucauldian discourse analysis serves as my primary method of engagement, allowing me to examine the discursive regularities across different forms, subject positions, and truth procedures in order to analyze the various and varied ways that water is registered, inhabited, and understood in settler Canada. Discourse analysis allows me

to make linkages between representation and practices in the settler state. Specifically, Foucault's notion of discourse helps me to understand the ways by which social systems produce particular forms of knowledge within historical contexts, and how these forms of knowledge have the power to render other forms of knowledge as illegible, unintelligible, and illegitimate. I am specifically interested in the material effects of discourse—how discourse produces “practices that systematically form the objects of which they speak” (Foucault 1981, 135-140). Dominant discourse around the meaning of rights in a settler state produces and organizes knowledge in material ways that demarcate the “constitution of social (and progressively global) relations through the collective understanding of the discursive logic and the acceptance of the discourse as social fact” (Adams 2017, n.p.). Rachel Adams elaborates, writing, “For Foucault, the logic produced by a discourse is structurally related to the broader episteme (structure of knowledge) of the historical period in which it arises.” “However,” she continues, “discourses are produced by effects of power within a social order, and this power prescribes particular rules and categories which define the criteria for legitimating knowledge and truth within the discursive order” (2017, n.p.). Understanding how discourse works thus helps me deconstruct the taken for granted logics that have come to constitute the “social fact” of Indigenous rights in Canada.

My engagement with Indigenous paradigms—the worldviews, philosophies, legal assertions, and cultural perspectives of Indigenous peoples as they are asserted in opposition to and despite the discursive construction of settler colonial Indigenous rights regimes helps me to destabilize, particularize, and defamiliarize the solidification of these discursive constructions. However, given the integral role of Indigenous theory and

storytelling in this dissertation, discursive analysis, especially as a tool of deconstruction, may not always be appropriate for engaging these unique modes of representation. I thus also aim to engage what Margaret Kovach (2009) and Shawn Wilson (2008), among others, have referred to as critical Indigenous methodologies. While Indigenous methodologies encompass a wide range of nation and discipline specific methodological approaches, they generally foreground the significance of story, relationality, and relational accountability as ethical standards for research, and stem from Tribal and community-centered knowledges (Wilson 2008, 6). Further, Indigenous research methodologies emphasize the integral connections between “knowing, story, and research,” wherein Indigenous storytelling is centered as an important means of knowledge production, and thus serves a valuable site of research and epistemological/ontological understanding (Kovach, p.18). Indigenous storytelling, through literature, creation stories, and community narratives, helps me to understand and engage with the parameters of Indigenous water worlds, for example. Jo-Ann Archibald’s conception of Indigenous “storywork” is an integral component of many Indigenous methodologies and situates storytelling and story-listening as fundamental to research with Indigenous peoples and on Indigenous issues (2008). I draw on Indigenous creation stories, literary and cultural production, and community-action, in order to understand how Indigenous narratives world the world in particular ways—how these narratives construct and perpetuate Indigenous water worlds, give voice to and express Indigenous legal orders and hydrosocial relations, and give meaning to Indigenous peoples’ inherent rights to and self-determination over their waters.

More specifically, I deploy Indigenous methodologies of critical place inquiry (Tuck and McKenzie 2015), and Mishuana Goeman's feminist discursive method of "(re)mapping" (2013). The aim of Goeman's (re)mapping method is to "unsettle imperial and colonial geographies by refuting how these geographies organize land, bodies, and social and political landscapes (Tuck and McKenzie, 134). Emphasizing the parenthesized "re" of (re)mapping in a way not dissimilar to my notion of "(re)making" in relation to the (re)making of Indigenous water worlds, Goeman writes,

The labour of Native authors and the communities they write within and about undertake in the simultaneously metaphoric and material capacities of map making, to generate new possibilities. The framing of "re" within parenthesis connotes the fact that in (re)mapping, Native women employ traditional and new tribal stories as a means of continuation or what Gerald Vizenor aptly calls stories of survivance. (2013, 3)

Goeman explores the ways that Indigenous women in particular have defined Indigeneity, their communities, and themselves by challenging colonial spatializing practices, and especially through Indigenous women's literary production (Goeman 2013; Tuck and McKenzie 135). I follow Goeman's notion of (re)mapping as a method of analysis as I examine my sites of Indigenous resistance—the majority of which are indeed authored by or centre Indigenous women; I analyze these literary, cultural, and political texts for the ways they resist the discursive dominance of settler liberal rights discourse, and the alternative hydrosocial relations they offer. Ultimately, I consider the ways that Indigenous spatializing practices, their literary and discursive (re)mapping, give meaning to the inherent rights of Indigenous peoples—how they contribute to the material remaking of Indigenous water worlds.

Indigenous methodologies work as an important amendment to discourse analysis in the sense that discourse analysis is largely about deconstructing the taken for granted

discourses that form the world as we know it—to “disrupt its pretended continuity,” in Foucault’s terms. As I will show, in relation to my sites of analysis, this coherence and continuity has been constructed as a settler water world that attempts to totalize itself, its approaches to and treatment of water, water rights, and the legibility of other’s interactions with waters in the settler state (Foucault 1977, 154). To approach Indigenous texts through some of the storying and relational tenets that comprise Indigenous methodologies, on the other hand, is to emphasize the “re” of Indigenous legal and political orders, worldviews, and the water worlds they express—the (re)making, the (re)mapping, and the general (re)building of worlds subjugated to an aggressive settler colonialism and its dominant liberal ordering practices established in the waterways of Turtle Island.

To be sure, I cannot adopt or apply Indigenous methodologies in absolute or simple terms; indeed to truly engage with the community and tribal contexts integral to Indigenous methodologies might mean that I read Cree texts with an understanding of Cree storying practices, Anishinaabe, with Anishinaabe storying practices, and so forth. Within the context of this project, these are understandings that I have access to only through the Indigenous theorists who inform my readings. Rather, in attending to this methodological engagement as best as I can, I hope to demonstrate how this dissertation, in some small way, is contributing to the kind of remaking I discuss throughout—how it is attempting to do some of the work of settler decolonial engagement, in learning how to read and understand, how to reckon with the problem of legibility and illegibility, and how to live relationally with Indigenous water worlds without overdetermining their meaning. Importantly, as Goeman notes, the task here is not to recover a static past, but

rather to “acknowledge the power of Native epistemologies in defining our moves toward spatial decolonization” (135). In short, Indigenous methodologies ensure that negative critique is supplemented by decolonial modes of inquiry that aim to rebuild and bolster, rather than merely deconstruct and destabilize.

I begin my dissertation with the ongoing “wild rice wars” between cottagers and Anishinaabe rice harvesters at Pigeon Lake near Peterborough, Ontario, before turning to 19<sup>th</sup> century Upper Canada (later Ontario), along the Trent Severn Waterway and the Mississippi River near Lanark County, in order to understand the emergent structures of knowledge and material ordering practices that shaped the meaning of rights discourse in settler Canada, and how this meaning constrains the legibility of Indigenous rights within its limited discursive order to this day. Through settler life-writing and early water policy, I analyze both rights discourse generally, and more specifically, the ways in which social relations to water are produced through a discursive order and subjective identification premised on the right to private property and early settler logics of possession. I then look to contemporary 20<sup>th</sup> and 21<sup>st</sup> century manifestations of this liberal rights discourse along the English Wabigoon River system and the political response to the ongoing pollution of the waterways of the Treaty 3 Anishinaabe. I examine the ironic representation of late liberal Canadian environmentalism and its settler subjectification, as expressed in settler literature, to better comprehend the logics of possession and the politics of recognition that manage Indigenous resistance, and attempt to delimit the meaning of Indigenous relations to water, and the inherent rights that would support these relations.

Foucault’s concept of discourse is indeed encompassing, illustrating how, “In every society the production of discourse is at once controlled, selected, organised and

redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality” (Foucault 1981, 53). However, his description of discourse analysis as a technique of critique ensures a critical interpretation of the ways that power is produced by what is said, written, and instituted in discourse. Discourse analysis is thus that which “must seek to unfix and destabilise the accepted meanings, and to reveal the ways in which dominant discourses exclude, marginalise and oppress realities that constitute, at least, equally valid claims to the question of how power could and should be exercised” (Adams 2017, n.p.). Discourse analysis therefore provides me with the tools through which to both understand how taken for granted logics of possession are produced through dominant rights discourse—how this discourse shapes the meaning of water and water rights for Indigenous peoples, but also how water might be discursively constituted otherwise—how water’s paradoxes make it resistant to dominant discursive constraints to materialize it in particular ways, and how Indigenous hydrosocial relations and legal orders illustrate the limits of dominant rights discourse and the material water worlds they produce.

The latter half of my dissertation thus looks to Indigenous rights disputes in the James Bay region and along the Grand River in southern Ontario, as I turn more specifically to Indigenous responses and articulations of Indigenous legal orders and hydrosocial relations that stand or could stand in opposition to the settler ordering of Indigenous lands and waters, and the corresponding imposition of rights legibility. Here, I read Indigenous cultural production, political action, and treaty in an attempt to draw out the relational focus, the significance of Indigenous women, and the kinship relations

that undergird the remaking of Indigenous water worlds in these specific contexts. Indeed, Indigenous methodologies which emphasize the relational power of story—the ability for story to foster “synergistic interaction between storyteller, listener, and story” (Archibald 2008, 33)—helps me to attend to the specificity of what the (re)mapping, in Goeman’s term, or the remaking of Indigenous waters worlds must entail. As such, through the various textual sites and political situations I examine, this dissertation is equal parts critical deconstruction of the dominant discursive settler colonial order around Indigenous rights, and re-imagining, and locating instances of alternative Indigenous orders that allow for water and the social relations it produces to be thought otherwise, and in ways that ensure the inherent rights of Indigenous peoples are not overdetermined by Western rights discourse and its material implications on the waters of Turtle Island.

## **Theoretical Framework and Context**

### *Indigenous Rights/Inherent Rights*

Before turning to the specificity of Indigenous water rights and the dominant frame of investigating rights legibility in this dissertation, it is useful to understand the terrain of Indigenous rights in Canada more generally. The discourse surrounding Indigenous rights is produced through a range of sites, which construct their meaning in various ways. Canada’s “official” Indigenous rights policy dominates the discursive field of Indigenous rights, limiting their legibility to that which is comprehensible under Canadian common law, and the interpretations of land, property, and sovereignty that it upholds. Indeed, my dissertation begins at the limits of Indigenous rights policy in

Canada, and how these limitations shape and constrain the meaning and breadth of Indigenous peoples' inherent rights. Interpretations of Indigenous rights in Canada are multifaceted, complex, and deeply contested. From the vantage point of the Crown and ensuing Canadian state, Indigenous rights have been historically and contemporarily interpreted and articulated through treaties, the Royal Proclamation, the Indian Act, Supreme Court decisions, section 35 of the Constitution Act, and the specific terms set out by various rights claims, settled and ongoing.<sup>5</sup> In our contemporary moment, decisions at the superior court level have broadened the interpretation of "Aboriginal"<sup>6</sup>

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<sup>5</sup> Various treaties and agreements between European settlers and Indigenous nations stretch as far back as the time of early contact. The Two Row Wampum, or *Guswenta*, is often cited by the Haudenosaunee and beyond as the earliest treaty between settlers and Indigenous peoples, dating to 1613 in Haudenosaunee oral history, and articulating a relationship of mutual cohabitation and noninterference between the Haudenosaunee and Dutch, and ensuing French, British and eventual Canadian settlers (see for example, Hill, 2008; Monture, 2014; and the work and teachings of Rick Hill, *Six Nations*). The government of Canada does not officially reckon with the meaning and implications of these earlier treaties, and instead identifies an era of "early colonial diplomacy" in the 1700s as the beginning of treaty making with Indigenous peoples prior to confederation. The Robinson and Douglas treaties are cited as key treaties for the expansion of the West pre-confederation, and the Indian Act and Numbered Treaties are officially understood as integral colonial frameworks for determining Aboriginal right and title in early post-confederation Canada.

Given the limitations of this purview of treaty making, the Government of Canada introduced the Comprehensive and Specific treaty policies in 1973, prompted, in part, by the *Calder* case, which was the first time that the Canadian legal system acknowledged the existence of Aboriginal title to land as that which may not be derived exclusively from Canadian colonial law (see for example, *Indigenous Foundations*, UBC; Lawrence, 2012, P. 54-82). While British Columbia's lower level courts had dismissed the claims of Frank Calder and others from the Nisga First Nation, the 1973 Supreme Court decision stated that Aboriginal title indeed existed at the time of the Royal Proclamation of 1763. This decision marked the first time that the Canadian legal system recognized the existence of Aboriginal right and title outside of the constraints of Canadian colonial law, thus paving the way for Indigenous claims to land not previously established through historic treaty making (See UBC's *Indigenous Foundations*, *The Canadian Encyclopedia*, and *Aboriginal Affairs and Northern Development Canada*.) Further still, at the demands of First Nation, Métis, and Inuit peoples, section 35 was included in the Constitution Act of 1982, asserting that "the existing Aboriginal and treaty rights ... are hereby recognized and affirmed." While section 35 affirms, but does not create Aboriginal rights, its ambiguous meaning has both allowed for and foreclosed upon the meaning of Aboriginal right and title through the ongoing negotiation of what has been termed Canada's modern treaty making process under Comprehensive land claims policy.

<sup>6</sup> Throughout this dissertation I use the term 'Indigenous' wherever possible to refer, generally, to the first peoples of settler colonial nation states, such as Canada, the United States, New Zealand, and Australia. I cite the names of specific Indigenous nations where ever possible. I use the term 'Aboriginal' only when referring directly to Canadian policy, or existing literature that uses this terminology as an umbrella term for First Nations, Métis, and Inuit peoples in Canada. These categories are broad, non-specific, and at times problematic, but also identify important distinctions within the confines of Canadian state recognition of Indigenous peoples.

right and title, and yet state articulations of so-called Aboriginal rights remain overdetermined and defined under the sovereign jurisdiction of Canadian colonial law.<sup>7</sup>

Interpretation of Indigenous rights in our contemporary moment has occurred most definitively through Canada's Comprehensive Land Claim Agreement policies (CLCAs)—what are often referred to as the “modern treaties” and what the Canadian government calls “the unfinished business of treaty-making” (Government of Canada, “Comprehensive Claims”). In the broadest sense, CLCAs seek to address ownership, management, and use of lands, waters, and natural resources (Land Claims Agreement Coalition; Indigenous and Northern Affairs Canada). More significantly, they set out to determine the meaning and breadth of Aboriginal right and title in terms that the state deems legible within the constraints of the assertion of Crown sovereignty. While significant progress has been made by Indigenous peoples through the CLCA process, Bonita Lawrence writes,

Ultimately, there is little difference between, on the one hand, historical treaty making and policies based on assimilation, and on the other, modern treaty making and policies based on containment and the notion that Native peoples will be domesticated through subordination to Canadian authority and therefore finally neutralized as sovereign entities. (2012, 74-75)

Similarly, Jeff Corntassel critiques Indigenous self-determination that relies on Western rights-based discourse, such as that articulated through the comprehensive claims process, arguing that “the pursuit of a political/legal rights-based discourse leads indigenous peoples to frame their goals/issues in a state-centered (rather than community centered) way.” (2008, 115)

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<sup>7</sup> In early 2018, the Liberal government under Justin Trudeau announced that it will be exploring a new framework for Indigenous rights in Canada. The development of this framework is still underway at the time of submission of this dissertation.

Indeed, major incongruities exist between the state and Indigenous peoples within comprehensive claims agreements. First and foremost, Indigenous peoples insist that what the state calls “Aboriginal title” to land arises from their having lived upon and used the land since time immemorial (Henderson 2002; Kulchyski 2013). Further, within this viewpoint, Aboriginal rights are territorially-based and asserted in the ongoing lived practice of Indigenous culture within the lands and waters that they have always occupied (Battiste and Henderson 2002). Conversely, the Canadian state’s approach suggests that Aboriginal title is derived from a set of legal documents, such as the Royal Proclamation of 1763 and that Aboriginal rights are subject to a set of predetermined tests outlined in the *Van der Peet* case<sup>8</sup> (Christie 2007; Kulchyski 2013; Turner 2006, 2013). Further still, it is the Canadian government’s policy to seek certainty, extinguishment, and perhaps most unapologetically under the former Harper administration, termination, of Aboriginal rights through comprehensive claims agreements (Blackburn 2007; Diabo 2012; Mackey 2014, 2016). In Peter Kulchyski’s words, “Simply put, most First Nations see modern treaties as ways of reaffirming and asserting their continuing ownership of their traditional territories. The state sees modern treaties as a way of ending that ownership in “exchange” for much smaller pieces of land and a small chunk of capital” (2013, 108).

The irreconcilability of these different viewpoints over land use and ownership may be best understood as matters of sovereign jurisdiction. As such jurisdictional matters, the “claims” of Indigenous peoples are situated and confined within the framework of Canadian colonial law. Within the courts, the struggle has been whether or not the law

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<sup>8</sup> The *Van der Peet* case (1996) further defined Aboriginal rights as outlined under Section 35 of the Constitution Act, 1982. The case resulted in a list of 10 criteria, known as the “Integral to a Distinctive Culture Test,” which is intended to determine how Aboriginal rights are to be defined. For a list of the 10 criteria, see: <http://indigenousfoundations.arts.ubc.ca/home/land-rights/van-der-peat-case.html>.

should recognize Aboriginal right and title based on Indigenous relationships to the land, or whether the Anglo-Canadian norms of private property ownership should be upheld (Bhandar 2015). Shiri Pasternak writes, “At the heart of this encounter, is a conflict over the inauguration of law—or the authority to have authority—and the specific forms of struggle that arise when competing forms of law are asserted over a common space” (2014, 146). Canada’s assertion of jurisdiction over all of the lands and waters within its borders enshrine the form of the law solely within the colonial context, negating Indigenous assertions of sovereign right and title as they might otherwise arise within their own culturally, historically, legally, and politically specific milieu (Pasternak 2014; Borrows 2002, 2010). Indeed, those who find themselves within “the territorial boundaries of Canada are already presumed to exist within a particular body of law” (Pasternak, 148).

While section 35 of the Constitution Act recognizes and affirms Aboriginal rights, the various interpretations of this form of recognition highlight the limitations of Indigenous rights and the meaning of Indigenous sovereignty that are derived from state recognition. While many scholars have echoed the sentiment that Section 35 “*recognizes* Aboriginal rights, but it did not create them” and that “Aboriginal rights have existed before Section 35” (Hanson, “Constitution Act”), Indigenous peoples have consistently had to prove and establish these rights through settler state and judicial forms of recognition. As Taiaiake Alfred states,

There had been a lot of court activism and a lot of legal decisions that amounted to the court saying: 'There's such a thing as aboriginal title. You don't have it, but aboriginal title exists, so I'm sending this decision back down so that you can try again to prove that you have it. But when you are the person whose land is being used by mining interests, uranium explorers, settlers and so forth, you don't see as

a victory ten more years of lawyers doing battle in court for this vague concept of aboriginal rights and title. (2015, 5)

Indeed, despite the 2014 Tsilhqot'in decision, where the supreme court determined that the criteria for Aboriginal title had been met for a small piece of the Tsilhqot'in Nations' territory, declaring Aboriginal title for the first time in Canadian history (Tsilhqot'in Nation v British Columbia), Indigenous title to land remains over-determined by Western land rights discourse, which has made little room for Indigenous conceptions of land tenure, sovereignty, and the legal orders through which they are articulated and defined.

It is within this fraught legal context that many activists and scholars have articulated and enacted a resistance to state-sanctioned engagement over rights disputes in Canada (Alfred 2009; Coulthard 2007, 2014; Diabo 2012). This viewpoint suggests that Indigenous self-determination has been co-opted within a limiting liberal pluralistic "politics of recognition" that seeks to "reconcile Indigenous claims to nationhood with Crown sovereignty," which is, of course, also jurisdictional sovereignty (Coulthard 2007, 438). Further, following the work of Yellowknife Dene scholar Glen Coulthard, this view of rights claims is best characterized as a *settler-colonial* relationship, in which power relations "in this case, interrelated discursive and nondiscursive facets of economic, gendered, racial, and state power" have been structured and enacted within "a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the *dispossession* of Indigenous peoples of their lands and self-determining authority" (Coulthard 2014, 6-7, emphasis in original). Within this viewpoint, Canadian Indigenous rights policies are operationalized in ways that fix interpretations of Indigenous rights within the settler colonial social relations of capitalist ownership and presumed sovereign jurisdiction; attempts on the behalf of Indigenous nations to engage in state-sanctioned

rights claims are correspondingly fixed within and limited by this settler colonial purview (Alfred 2005; Coulthard 2014; Corntassel 2008).

Indigenous conceptions of rights and assertions of sovereignty, however, exceed and unsettle these limited settler-colonial notions. Indigenous peoples have inherent rights—rights that do not flow from the Crown, and which produce different kinds of knowledge through alternative, albeit subjugated discourses around land, water, peoplehood, culture, belonging, and law. As Heather Dorries states, “This inherent right . . . is derived from the fact that Indigenous peoples were sovereign before European settlers arrived” (1-2). James (Sakej) Youngblood Henderson similarly identifies Indigenous rights as *sui generis*, predating Crown sovereignty, and as such, any constitutional recognition of these rights is simply an acknowledgement of those that predate and exist with or without that recognition (417). Recognizing that there is no simple definition of the inherent rights of Indigenous peoples in Canada, given the diversity of First Nations, Métis, and Inuit peoples, inherent rights are generally understood as collective rights that flow from the original occupation of the lands now known as Canada (Dorries 2012; Henderson 2002; Turner 2006).

It is not my aim to further define or circumscribe the meaning of Indigenous peoples’ inherent rights. What should be clear from the discussion above is that “Aboriginal rights” as defined by the Canadian nation state represents insufficient engagement with broader conceptions of the inherent rights of Indigenous peoples. The circumscription of Indigenous peoples’ rights under the banner of “Aboriginal rights” is a means of delimiting the legibility of Indigenous rights as they are expressed on their own terms. While various assertions of Indigenous peoples’ inherent rights will be explored

throughout the chapters that follow, the 46 Articles that comprise the United Nations Declaration on the Right of Indigenous Peoples offer a useful and broad interpretation of the inherent rights of Indigenous peoples that guides my thinking throughout this dissertation.<sup>9</sup> Notably at the time of writing this dissertation, despite campaign commitments suggesting otherwise, Canada has yet to implement the United Nations Declaration on the Right of Indigenous Peoples.

### *Indigenous Self-Determination and Sovereignty*

Before moving on to Indigenous water rights, it is further useful to understand what is meant by Indigenous law and sovereignty throughout this dissertation, and how the inherent rights that are derived through Indigenous law and sovereignty come to bear on Indigenous rights discourse in the settler state. While I cannot contend with the breadth of Indigenous legal orders and conceptions of sovereignty, I highlight and mobilize common theories and assertions in order to, first, illustrate the often-well established Indigenous legal orders that challenge Western liberal rights-based approaches to land tenure, and secondly, to query how water can work as the central catalyst for rethinking Indigenous rights in the settler colonial nation state. As a settler scholar, I follow the self-positioning of Eva Mackey, and others, who “do not proceed by critically assessing and evaluating Indigenous sovereignty claims” (Mackey 2016, 13). Rather, as Anishinaabe scholar Dale Turner notes, “the meaning of Aboriginal sovereignty in all its diversity is best understood by listening to the myriad voices of Aboriginal peoples themselves” (Turner 2006, 59). Where ideologies of colonial legal

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<sup>9</sup> See Articles 1 to 46 of the United Nations Declaration on the Rights of Indigenous Peoples: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

positivism suggest that Indigenous peoples cannot make sovereignty claims within the confines of the Canadian state, or that these claims must be reconcilable with the judicial sovereignty of Canadian common law,<sup>10</sup> I look to various and varied assertions of Indigenous sovereignty, derived from Indigenous legal orders and which work to challenge, and in some instances, which are mobilized in conjunction with existing Canadian legal and political frameworks without being subservient to them (Dorries 2012; Henderson 2002).

Assertions of Indigenous sovereignty carry different meanings depending on different contexts of engagement. For some they mean acknowledgment of Indigenous law and interpretation of treaties under the banner of the Canadian Constitution, or in relation to the Canadian state (Henderson 2006, 2014; Borrows 2010); for others, they mean a sharp turn from forms of state recognition and a return to land-based practices, where self-determination, or the concept of Indigenous resurgence, may be understood to better serve the interests of Indigenous peoples, rather than the discourse of sovereignty with its Western political-legal connotations (Alfred 1999; Alfred and Corntassel 2005; Corntassel 2008; Coulthard 2014; Simpson 2014). I try to hold both interpretations in my mind throughout this dissertation, and recognize that my own interest in considering the limitations and potential of land and water rights in relation to the settler state may limit interpretations of sovereignty that diverge from all forms of state engagement.

Dorries, for example, illustrates the limits of Indigenous sovereignty within the confines of state recognition, writing, “The emphasis on rights within a legal framework limits the possibilities for decolonization to the legal remedies offered by the western

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<sup>10</sup> See, for example, Dale Turner’s discussion of Flanagan and Cairns in *This is Not a Peace Pipe* and Eva Mackey’s discussion of settler entitlement in *Unsettled Expectations*, p. 13.

legal system” (11). Drawing on Corntassel, she continues, “rights-based discourse has separated questions of access to land and natural resources from those of political autonomy” (11). While there is no doubt that “rights-based discourse,” at least in so far as it is overdetermined by the state, is limiting to Indigenous peoples’ political autonomy, there are numerous Indigenous legal scholars who seek to alter the meaning of Indigenous rights within state engagement. Indeed, if “Aboriginal rights” exist, as both Indigenous peoples and the Canadian constitution assert, and if these rights are “*sui generis*,” and not in fact granted by the state, then there needs to be room within state political and legal engagement for the assertion of these rights from the perspectives of Indigenous peoples. Turner suggests, “*As a matter of survival*, Aboriginal intellectuals must engage the non-Aboriginal intellectual landscapes from which their political rights and sovereignty are articulated and put to use in Aboriginal communities”; he continues, “Aboriginal intellectuals must develop a community of practitioners *within* the existing dominant legal and political intellectual communities, while remaining an essential part of a thriving Indigenous intellectual community” (2006, 90, emphasis in original). While the “intellectual landscapes” that Turner highlights are inherently and historically colonial, and while there are important critiques of this kind of engagement (Alfred 1999; Coulthard 2014; Lawrence 2012), the negotiation and assertion of Indigenous rights within the Canadian legal system has been an important means for the assertion of Indigenous sovereignty in numerous and significant Indigenous rights disputes.

Henderson offers a robust definition of Indigenous sovereignty which works to reconcile the sometimes-divergent views between state-engagement and the refusal of a “politics of recognition”:

In aboriginal thought, sovereignty is not about absolute power; rather, it is about the subtle art of generating and sustaining relationships. It is a distinct vision about the way humans live together and behave in kinship and an ecosystem, a distinct tradition of philosophies and humanities. It is a distinct philosophy of justice and legal traditions based on spiritual and ecological understandings, as well as linguistic conventions that are interconnected with these. It operates as an implicit, inherent, epistemic, unwritten, and living concept. (2010, 30)

Understanding sovereignty as a “living concept” allows for its mobilization in various contexts and modes of engagement, whether it be through the sometimes-necessary assertion of Indigenous sovereignty within state engagement over Indigenous rights, or articulations of Indigenous sovereignty that are community-facing, and focused on cultural and political resurgence from within. Drawing from different Indigenous perspectives on the meaning and enactment of Indigenous sovereignty, I proceed on the basis of the assumption that challenging the rights-based discourse that emerges from the state and foregrounding Indigenous resurgence within communities themselves are not mutually exclusive decolonial projects. Rather, I assert in this dissertation that a crucial problem of state engagement with the inherent rights of Indigenous peoples is the state’s persistence in framing Indigenous peoples’ inherent rights as illegible under colonial jurisdiction.

To be sure, where ideologies of legal positivism mark the colonial development of the Canadian nation, numerous assertions of Indigenous sovereignty and legal orders have disrupted these fixed notions of colonial jurisprudence on multiple fronts, expanding and reinterpreting what is meant by Indigenous rights.<sup>11</sup> From Chief Deskaheh’s assertion

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<sup>11</sup> Legal positivism is the presumption that the meaning of law depends on social facts, rather than the merit or justice of law. In the settler nation state, this means that the social facts of settler colonialism ensure that the law upholds the dominant social structures that underpin the settler colonial project, while negating, or even justifying the injustices experience by Indigenous peoples within this legal framework. The Stanford Encyclopedia of Philosophy offer a useful definition of legal positivism. Within the philosophy of legal positivism, “whether a society has a legal system depends on the presence of certain structures of governance, not on the extent to which it satisfies ideals of justice, democracy, or the rule of law. What

of Haudenosaunee sovereignty and law nationally and internationally at Six Nations of the Grand River, in London, England, and at the League of Nations in Geneva throughout the 1920s,<sup>12</sup> to the inclusion of Section 35 under the Canadian Constitution, which some view as the “converg(ing) of Aboriginal jurisprudence” toward an “emergent postcolonial nation” (Henderson 2006, ix), to innumerable other assertions of Indigenous law and sovereignty “developed across countless generations by Elders, knowledge keepers, performers, and storytellers through their covenants, worldviews, experiences, and accumulated wisdom” (Henderson 2006, ix-x), Indigenous sovereignty is a living, robust, complex, and integral concept that the state must reckon with. As Mohawk scholar Audra Simpson states, “Indian sovereignty is real; it is not a moral language game or a matter to be debated in ahistorical terms. It is what they have . . . and thus it should be upheld and understood robustly—especially as Indians work within, against, and beyond . . . existing frameworks” (qtd in Mackey 2016, 14). Building upon Simpson, Mackey adds, “[Indigenous] sovereignty is central to their individual and collective lives, identities, spirituality and politics and, as a separate matter, to negotiating nation-to-nation relationships with settlers and the settler state” (15). Drawing from these scholars, I approach issues of Indigenous peoples’ inherent rights, sovereignty, self-determination, and legal orders throughout this dissertation from the place, nation, and community-specific contexts from which they emerge, recognizing and grappling with the unique and multifaceted iterations of Indigenous assertions of sovereignty that are produced variously across Turtle Island.

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laws are in force in that system depends on what social standards its officials recognize as authoritative; for example, legislative enactments, judicial decisions, or social customs” (2003, n.p.).

<sup>12</sup> See Rick Monture’s 2014 text *We Share Our Matters*, pages 116-133.

### *Indigenous Legal Orders*

Like Indigenous assertions of sovereignty, then, the meaning of Indigenous legal orders also occurs inside and outside of state engagement. Fundamentally, Indigenous legal orders exist prior to the formation of the Canadian state and colonial jurisprudence, and so their inclusion at the state level should itself be understood as an assertion of Indigenous sovereignty. Henderson writes, “Aboriginal societies developed their laws and jurisprudence without any knowledge of European jurisprudence, basing them on the laws, values, principles, stories, traditions, symbols, and ceremonies given to them by the Life Giver that generated relationships, duties, and responsibilities” (2006, 126); he continues, “They existed prior to contact between Aboriginal and European societies and prior to the assertion and protection of sovereignty by the imperial British sovereign. This fact makes First Nations jurisprudence distinct from other jurisprudences, integral to their order, and thus *sui generis*” (126). Borrows similarly suggests that “we do not have to abandon *law* to overcome past injustices. . . . Since First Nations legal traditions were the first laws of our countries and were not extinguished through discovery, occupation, prescription, or conquest, they could be viewed as retaining their force” (2010b, 21).

Operating under the premise that Canada is inherently a “juridically pluralistic state” (Borrows 2010a, 23), and building upon several landmark cases in Indigenous rights, as well as Section 35, both Borrows (2010a; 2010b) and Henderson (2002, 2006, 2014) put forth assertions of Indigenous law within the constitutional framework of Canada, viewing this approach as “a transformative method to protect Aboriginal peoples and generate constitutional reconciliation” (Henderson 2014, 49). However, this is of

course not the only interpretation of or site of expression for Indigenous law, and constitutional reconciliation with Indigenous law remains, in many ways, only a horizon of possibility. Indigenous legal orders are rarely legible to the liberal discursive rights frameworks propagated by the state, and thus their complexity is often not fully accounted for.

I follow the Indigenous legal scholarship of Val Napoleon, as well as that of Jessica Clogg, Hannah Askew, Eugene Kung, and Gavin Smith, and use the term “Indigenous legal orders” to “broadly encompass various Indigenous legal orders (structure and organization of laws) and Indigenous laws within those orders” (Clogg, Askew, Kung, and Smith, 231). As Napoleon explains, the term “legal system” describes a state-centered legal system wherein law is managed by legal professionals in and through legal institutions that are often separate from other social and political organizations. Alternatively, the term “legal order” may be used to describe law that is embedded throughout social, political, economic, and spiritual institutions (Clogg, Askew, Kung, and Smith, 231). Indigenous legal orders are exceptionally diverse, sharing common themes, but are fundamentally community, nation, and relationship based (Craft 2014; Henderson 2006; Borrows 2010b). Not unlike Canadian common or civil law, Indigenous law is that which is common to a given Indigenous society, nation, or community (Borrows 2010b). In his book *Drawing Out Law* (2010a), Borrows, for example, draws from community experience, oral traditions, dreams, familial relations, and interactions within the Western legal system to express the “ancient, rich, contemporary but nevertheless still developing Anishinabek legal perspective” (xi). In its companion book, *Canada’s Indigenous Constitutionalism* (2010b), Borrows offers

several concrete examples of Indigenous legal traditions, from the Mi'kmaq, to the Cree, Métis, and Inuit, in order to show how “the underpinnings of Indigenous law are entwined with the social, historical, political, biological, economic, and spiritual circumstances of each group,” and also how these circumstances must be recognized as legitimate inside and outside of Canadian legal frameworks (23-24).

Borrows goes to great lengths to outline how Indigenous legal orders can be categorized in ways that make them more legible to the Western legal framework,<sup>13</sup> and which ensures they are not relegated to simplified versions of “customary law”;<sup>14</sup> alternatively, while some Indigenous legal orders may be legible within the confines of settler legal frameworks, others are expressed through complex assertions of culture and lived relationships, which foreground the structuring of Indigenous societies, rather than their relationship to the state, and which thus far have not been legible under the discursive structures of Indigenous rights in Canada. In a 2013 community-based study with Anishinaabe Elders at Roseau River, Manitoba, for example, Aimée Craft explores the Elders’ understanding of Anishinaabe nibi inaakonigewin (Anishinaabe Water Law);<sup>15</sup> Craft writes, “The Elders spoke of different types of law, using terms such as

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<sup>13</sup> Borrows does not limit Indigenous legal orders to categorical definitions, but offers examples of sacred law, natural law, deliberative law, positivistic law, and customary law, asserting that Indigenous law need not be understood as so complex or culturally specific as not to be described in deliberate terms. See *Canada’s Indigenous Constitution* 23-58.

<sup>14</sup> Borrows (2010) outlines how a “hierarchy of laws” exists in Canada, where some legal orders are understood to be above others. Customs and conventions reside at the bottom of this hierarchy, and “was the kind of law Indigenous people were presumed to have, if they were regarded as having any law at all” (13). I follow Borrows in asserting that this hierarchy is inherently settler-colonial and “presumes the legal inferiority of Indigenous people.” Further, while Indigenous law may include customs and conventions, not unlike common or civil law, it also includes many other levels of law integral to the ordering and maintenance of Indigenous societies.

<sup>15</sup> While some of the writers I draw on have chosen to italicize words written in Indigenous languages, in a similar way one might italicize French or Latin when writing in English, I have deliberately chosen not to do the same. In relation to this project’s concern with legibility and illegibility, my hope is that the insertion of Indigenous language whenever appropriate prompts consideration with the problem of legibility. I would rather the words themselves do this work, and not a decision on my part to offset them with italics.

spiritual law, the Creator's law, the Great Binding Law, natural law, customary law and human law. Generally, the laws fell into four categories: sacred, natural, customary and deliberative. Sacred law was most referred to and other forms of law were said to flow from sacred law" (2014, 12). The Elders describe Anishinaabe law generally, as "a way of life," and distinguish its principles from those of Western law: "Western law tells us what to do, not what is there. It doesn't let us make up our own minds about what to do. Western law tells us exactly how to act; Anishinaabe law will not. Anishinaabe law acts as a guide and tells us what is" (Craft 2014, 22).

The Great Law of Peace, the organizing law of the Haudenosaunee people, represents another complex example of an Indigenous legal order, and one which is not easily made legible in terms recognizable to the Canadian state. Haudenosaunee worldviews that stem from their understanding and retelling of the Great Law represent perspectives grounded in culture and ontological experience that non-Haudenosaunee people simply may not have access to. Just as interpretation of Western law is so often relegated to the domain of specialized experts, lawyers, and judges, the Great Law forces a shift in the question of legibility, reorienting the impetus to read and understand the law from a distinctly Haudenosaunee perspective. If non-Indigenous peoples were to adhere to the Great Law of Peace in Haudenosaunee territory—a point I will return to in my final chapter—what is required, then, is deference to Indigenous legal orders on behalf of non-Indigenous peoples and the settler state. As numerous landmark Indigenous rights cases have illustrated, assertions of Indigenous legal orders represent not the need for Indigenous peoples to speak in a language recognizable by the courts, but "the need for the court[s] to learn *how* to listen to the evidence" as it is presented from Indigenous

perspectives and through Indigenous assertions of law (McCall 2011, 138).<sup>16</sup> Indeed, Indigenous legal orders represent modes of articulating and representing Indigenous conceptions of land and water tenure and responsibility outside of the narrow definitions prescribed through Canadian common law. When these legal orders are brought into Indigenous rights discourse at the state level, their goal is to shift the terms of negotiation, expand the meaning of evidence, history and title, and to reconfigure how the very nature of land tenure is constituted within the Canadian nation state.

To address Indigenous law in this dissertation in a comprehensive way would be akin to exploring the history, operation, and interpretation of British common law—surely an impossible task for a dissertation not solely concerned with the law in and of itself. Indeed, the task would be even greater given my position as a settler scholar who does not have access to the culturally specific complexity, let alone the languages that make up the legal orders of any particular Indigenous nation. Relatedly, I do not aim to express a legal ethnography of the Indigenous nations related to or involved in my sites of analysis—this work must be community-based, and as such, I draw my understanding from important pre-existing studies of that nature. While I mobilize Indigenous legal orders in both broad and specific ways throughout this dissertation, attempting to address them in their various manifestations and articulations, I am largely concerned with the potential for and problem of their legibility in relation to Indigenous water rights in a

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<sup>16</sup> For an example of how Indigenous legal orders pushed the boundaries of what the courts deemed recognizable, see Matthew Sparke's discussion of the Delgamuuw case in, Sparke, M. 'A Map that Roared and an Original Atlas: Canada, Cartography and the Narration of Nation', *Annals of the Association of American Geographers* 88, no. 3 (1998): 463–95. Dallas Hunt and I have also discussed the requirements for the Canadian state to learn how to read and reckon with Indigenous expressions of place in the first half of, Hunt, Dallas and Shaun A. Stevenson. "Decolonizing Geographies of Power: Indigenous Digital Counter-Mapping Practices on Turtle Island." *Settler Colonial Studies* 7, no. 3 (2016;): 372-21.

general sense. I do not, however, intend to treat Indigenous law symbolically, or as an empty signifier. While the specificity of the enactment of Indigenous law is more clear in some communities than in others, where it may be undergoing a resurgence, or is expressed in less demarcated terms, I follow Napoleon in her assertion that in concrete terms “Indigenous law is about building citizenship, responsibility and governance, challenging internal and external oppressions, safety and protection, lands and resources, and external political relations with other Indigenous peoples and the state” (2007, 2). This is to say that Indigenous law must be understood as a persistent and active force. As the scholars I draw on illustrate, Indigenous legal orders instruct relationships, outline values, influence social change, enforce social norms, and regulate relationships between Indigenous peoples and their environment (Borrows 2010a, 2010b, Craft 2014; Henderson 2010; Napoleon 2007, 2013). Indigenous legal orders distribute authority, and its legibility must be reckoned with in both specific and general ways. I thus look to how these laws are used and articulated, produced and understood within their given contexts in order to explore the conditions for their legibility within Indigenous rights discourse. Given my sites of analysis, my discussion of Indigenous legal orders will mostly be limited to that of the Anishinaabe, Cree, and Haudenosaunee, with even these nations representing a far greater diversity of Indigenous legal orders, histories, and worldviews than I can capture in this dissertation. My goal is not to make specific Indigenous legal orders legible to state conceptions of Indigenous rights, but to explore the problem of their legibility more generally, and how this is a problem that must be reckoned with in order for the remaking Indigenous water worlds in the settler state.

## *Indigenous Water Rights in the Settler State*

From state conceptions of land rights discourse, to Indigenous peoples' inherent rights, assertions of sovereignty, and legal orders, inside and outside of the courtrooms, what then is meant by Indigenous water rights? Not unlike Indigenous sovereignty and law, which existed prior to the imposition of Crown sovereignty, Indigenous water rights, or more accurately, water responsibilities,<sup>17</sup> those included in various articulations of Indigenous legal orders, have also existed as integral aspects of Indigenous societies since long before colonial settlement. Indigenous water rights are indeed inherent rights. Water, however, given its unbounded flow between and across territories, is subject to colonial constraints and impositions in ways that are not entirely the case with land. Where Indigenous sovereignty claims *may* see lands demarcated, set aside, or identified as Indigenous territories, with "Aboriginal title" recognized and affirmed, however limited, Indigenous rights to water remain subject to source water protections, development upstream and down, and the general policies of the settler state, which organize and influence Indigenous territories and their waters, regardless of jurisdictional boundaries. In short, even as it carries the effects of settler colonialism, its policies and pollutants, water most often disrupts the fixity and certainty of settler colonialism, aiding in resisting the foreclosure of Indigenous rights in the settler state. It is in this way that water's flow, its paradoxical and ambivalent fluidity, reveals the necessity of acknowledging and adhering to the significance of Indigenous water right, relationships,

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<sup>17</sup> A great deal of scholarship on Indigenous water rights suggests that water rights are best conceptualized as water responsibilities. See for example Cave and McKay 2016; Craft, 2014; King 2007. While I will explore the potential to conceive of rights as responsibilities in subsequent chapters, I continue to mobilize the concept of rights, given its history and significance in the Canadian context and globally. The continued calls for the implementation of UNDRIP further illustrates the significance of speaking in the language of rights. Rather than reproduce the necessity of Western liberal rights discourse, my aim is ultimately to present the requirements for expanded conceptions of rights as they related to Indigenous peoples.

and the legal orders that uphold them. While the different meanings of water for Indigenous and non-Indigenous peoples will be explored further below, it is important to understand the current relationship between Indigenous peoples and water within the settler state, its institutional, legal, and governance structures. To say the least, Indigenous rights to water, and water policy more generally in Canada are complex issues. I will not be able to cover the intricate histories and approaches to water management, governance, and rights across the country and between Indigenous nations and the state; rather, I highlight here some of the important strands that shape and limit Indigenous water rights in Canada, and which may also offer potential for their re-conceptualization.

Since early settlement, water rights have been conceived of in ways similar to that of land rights by colonial governments, where the rendering of water as property shapes the meaning of Indigenous water rights. As Kenichi Matsui notes in his text *Native Peoples and Water Rights*, “Statutory laws that aimed to regulate the use of natural resources also had the effect of commodifying fish, timber, and water in colonial lands, thereby aiding attempts to establish an imperial regime over nature and Indigenous lands. The idea of water rights,” he continues, “including “Indian water rights,” was derived from such a property-centered legal perspective” (2009, 10). While the meaning of water rights across Canada developed in slightly different ways between the East, the West, and eventually the Northern territories, Canadian water rights policy has historically worked to facilitate the “legal transformation of water into property” (Matsui 28). Whether through “riparian water rights”<sup>18</sup> in the East, transported to the colonies through English

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<sup>18</sup> The term “riparian” in riparian water rights refers to the interface between land and water. It is used to refer to the shoreline as a means of connecting water rights to property rights. For more information see the

common law, allocating water to those who possess land along its path, or through “prior-appropriation” water rights in the West, wherein the first person to make “beneficial use” of a water source has the right to continue to use that source for that purpose, water rights in Canada, and North America more generally, developed under the same logics of possession expressed through John Locke’s theory of property and Thomas Jefferson’s agrarian ideals. As Matsui states, “Their ideals laid the foundation for legal and political authorities to perceive water as property in order to accommodate capitalistic development” (37).

It is within this property-centered framework that Indigenous water rights have been defined and constrained by the state, if they have been acknowledged at all. Nlaka’pamux lawyer Ardith Walkem writes, “There are several possible sources within Canadian law that deal with the recognition and protection of indigenous peoples’ rights to, and in, water. These include reserve water rights and Aboriginal title, Aboriginal rights, and treaty rights” (2011, 304). Where reserve water rights, and specific treaty rights, set aside waters on reserve lands for the use of Indigenous peoples residing on reserve, Walkem is also careful to note that “despite the fact that reserve lands are federal creations, reserve water allocations fall under provincial or territorial water regimes” (305), which often neglect or break reserve or treaty rights when it serves the interests of the provinces or territories. Merrell-Ann Phare similarly suggests, “governments do not overtly accept that First Nations have rights to water, which means that First Nations are not “allowed” to exercise an inherent jurisdiction to manage or use water” (2009, 12). She highlights a “regulatory gap” in First Nations water rights specifically, where

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University of British Columbia’s Program on Water Governance “Fact Sheet: Water Rights Across Canada: [http://watergovernance.sites.olt.ubc.ca/files/2010/04/FS\\_Water\\_Rights.pdf](http://watergovernance.sites.olt.ubc.ca/files/2010/04/FS_Water_Rights.pdf)

incongruities exist between jurisdictional oversight, protections, and access to clean drinking water (13). Even when Indigenous peoples have determined specific rights regimes within their territories, they are rarely consulted on source water protections, and developments upstream that have direct impacts on their water sources (Phare, 15). For example, “The doctrine of prior appropriation made it possible for entrepreneurs and government officials to build large-scale dams and irrigation systems” (37), which have had devastating effects on Indigenous Nations across the country, a matter that will be discussed in greater detail below. Thus, the colonial water rights regime continues to shape and construe Indigenous water rights in its image, which hinges on notions of private property and water as resource. The establishment of this image, which has structured colonial water rights regimes will be further discussed in chapter one.

As Walkem notes, “Aboriginal rights and title” is also an integral aspect of determining the meaning of Indigenous water rights. As stated above, these rights must be understood to exist with or without state recognition, as *sui generis* rights, prior to the formation of the Canadian state and its imposition of colonial water rights’ frameworks.

Walkem writes,

Despite many years of colonization, the destruction of our territories, and the imposition of foreign laws and values, Indigenous peoples have maintained awe and reverence for the life-giving force of water and, across generations, have continued to call for the return of indigenous laws and traditions so that we can protect our peoples, waters, and territories” (304).

Where “Aboriginal title” remains a contentious and poorly defined issue within the courts, Indigenous law, and water laws specifically, must play a role in determining the meaning of Indigenous water rights in the settler colonial nation state. Indeed, “constitutional and legal recognition is hollow if it does not provide and protect

jurisdictional space for indigenous laws on lands, waters, and territories that are constitutive of Aboriginal nationhood and existence” (309).

Currently, however, most assertions of Indigenous water law remain subject to colonial water rights regimes, wherein co-management or water governance agreements may exist, but always within the confines of settler government jurisdiction. Some Indigenous nations have maintained important assertions of water sovereignty within these confines; for example, the Yinka Dene ‘uza’hné from Nadleh Whut’en and Stelat’en in British Columbia, formally enacted the Yinka Dene ‘Uza’hné Surface Water Management Policy and Yinka Dene ‘Uza’hné Guide to Surface Water Quality Standards in 2016, effectively enacting Indigenous water law in their territories, in accordance with the Yinka Dene legal tradition that have governed these territories “for thousands of years” (Yinka Dene ‘Uza’hné Surface Water Management Policy 2016, 1). This agreement is significant in settler colonial nations because it represents the necessity and potential for reckoning with water’s unquestionable relationality and in ways that flow from the distinct worldviews of Indigenous peoples. It is important to note, however, that the unique context of “Aboriginal title” in British Columbia makes such an enactment of Indigenous jurisdictional power over water obtainable in ways that may not be possible in other parts of the country.

Where Indigenous peoples’ inherent rights to waters, and assertions of water law remain negated, there exists a huge gap in water management and protection for both Indigenous and non-Indigenous peoples in the settler state. Indeed, in Canada, settler water governance generally is marked by mismanagement and regulatory gaps. Phare points out that water is, shockingly, not mentioned at all within the Canadian

Constitution. She writes, “the lack of reference in the Constitution was instrumental in creating one of our most challenging ecological, human health and economic issues today: the mythical belief held by Canadians that we have, and always will have, vast amounts of fresh water available to us” (22); she continues, “We have no national water policy, no enforceable national standards for drinking water quality, no binding national governmental statements about what we as Canadians consider to be the minimum water flows needed by all ecosystems. We have a system rife with gaps” (27). Understanding of water’s significance and complexity have thus been neglected by the settler state, limited within frameworks of property rights that do not account for water’s flows and requirements. Canada’s negation of Indigenous water law marks both an extension of this neglect, and an active disavowal of existing systems of law that foreground water as an integral part of our health and ecology, requiring respect and responsibility. Reckoning with the legibility of Indigenous water law, on the other hand, offers the potential to not only decolonize Indigenous rights in the settler state through the recognition of Indigenous jurisdictional powers, but also to create the possibilities for an approach to water that Canada as a nation has largely ignored.

I do not intend, however, to uphold Indigenous legal orders as an idealized solution to Canada’s inadequate water policy. Indeed, this might be the most natural solution within a late or neo-liberal Canadian environmentalism that would seek to situate Indigenous peoples as environmental stewards in a moment of global climate change and governance structures that have largely divested itself from environmental protections, or, ironically, have only committed to such protections while simultaneously investing in the very development projects that perpetuate both climate change and the destruction of

Indigenous lands and waters; this is the seemingly progressive liberalism that I will discuss and critique further below and in chapter two of this dissertation. Further, as Rey Chow has cautioned in *Ethics After Idealism*, there is an idealistic tendency “to relate to alterity through mythification; to imagine the ‘other,’ no matter how prosaic or impoverished, as essentially different, good, kind, enveloped in a halo, and beyond the contradictions that constitute our own historical place” (1998, xx). Thus, I do not want to situate Indigenous water law as a kind of mythic alternative to the perils of Western environmental policy; however, as Walkem writes, “Environmental justice for the waters, for indigenous peoples, and for all life requires fundamentally rethinking the way that we, as humans, interact with the waters that give us life” (313). Therefore, Indigenous water law is not mobilized as an idealized solution to global climate change, but as a political necessity for the lives and well-being of Indigenous peoples.

To be sure, there are significant differences between Western water rights policy and the way that Indigenous legal orders conceptualize water and the responsibilities it requires. These differences have largely not had the opportunity to proliferate under settler colonialism and the material water worlds it constructs. Clogg et al. write, “Indigenous legal traditions have a critical role to play in environmental governance in Canada. Indigenous law has governed the territory now known as Canada for millennia, and Indigenous legal traditions contain a wealth of accumulated knowledge about effective strategies for environmental governance” (2016, 255). Water’s unquestionable relationality demands a consideration of what alternative approaches to water could mean for everyone who inhabits these lands and their waterways. Thus, I aim to both resist the idealization of Indigenous approaches to water, and Indigenous worldviews more

generally, while also reading the expression of these worldviews on their own terms and in ways that might create the conditions for a remade approach to environmental governance in the settler nation state.

### *Indigenous Water Law*

Resisting the idealization of Indigenous approaches to water in abstract or detached ways can be achieved through the foregrounding of and reckoning with the complexities of Indigenous water law. In Craft's 2013 study, Elder Peter Atkinson explains that in Anishinaabe inakonigewin (Anishinaabe water law), "one must start from the premise that "water will never cease to flow downhill" (Elder Peter Atkinson, qtd. in Craft 2014). Atkinson's words encapsulate my emphasis on both water and law in the project that follows. Just as Atkinson's sentiments express the unyielding flow of water, they also gesture to the ways in which Anishinaabe law flows with it, disrupting any stable notions of jurisdictional and judicial sovereignty on Indigenous lands and waterways. As a central site of Indigenous knowledge and culture, water carries with it the impetus for Indigenous legal orders, and Indigenous legal orders articulate a distinct vision of water management, governance, and responsibility for Indigenous peoples. It is within this co-constitutive flow of water and law that I identify a potential to better understand the problem of legibility for Indigenous peoples' inherent rights—those rights not fully reckoned with in the water rights policy I describe above.

While some Indigenous legal orders around water have been expressed in terms that might be deemed straightforward or legible to non-Indigenous peoples and the settler

state,<sup>19</sup> others are expressed within nuanced and complex assertions of Indigenous ecological knowledge, language, and spiritual beliefs. These water laws are diverse, but often share common themes and understandings of one's relationship and cultural, political, and ethical orientation to water. Indigenous water law may be articulated as an extension of the legal orders that govern Indigenous lands and ways of life more generally (See Hill 2017). It may be expressed within the complex relational interplay between human subjects, the natural environment, and sacred stories handed down through time (Sam & Armstrong 2013; Craft 2014; King 2007; LaBoucane-Benson, et al. 2012). Water law may emerge variously through the waters themselves—through what one can “observe in nature” (Craft, 44), and through stories and teachings that express a relationality with water, wherein “water is a living being” requiring care and responsibilities expressed by the ancestors and Creator (Craft 2014; Yates, Harris, and Wilson 2017, 802). For the Cree, for example, water is “regarded with reverence because it is connected to the people's relationship with the Creator” (LaBoucane-Benson et al. 2012, 7). Member of the Haudenosaunee Environmental task force, Joyce Tekahnawiiaks King offers a similar, albeit Haudenosaunee perspective, writing, “From the perspective of the traditional Haudenosaunee, we speak in terms of responsibilities with respect to water, not in terms of water rights”; King continues, “From time immemorial, we have held the view that the “law of the land” is not man-made law, but a greater natural law, the Great Law of Peace. This law, in our view, is divine. The Haudenosaunee have a deep respect for the waters of the Earth” (452). Anishinaabe Elder Harry Bone relatedly suggests of Anishinaabe water law, that “our system doesn't work like common law

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<sup>19</sup> See for example Yinka Dene ‘Uza’hné Surface Water Management Policy, 2016.

rights. There is more importance placed on the spiritual law and the law of nature” (qtd. in Craft, 24). While these articulations vary from nation to nation, community to community, and even between individuals, a distinctly Indigenous conception of “natural law,”<sup>20</sup> often guided by a system of Indigenous spiritual belief is the basis of Indigenous water law across a range of studies.

Further, even Craft’s undertaking of a study to better express a vision of Anishinaabe water law offers a mere snapshot of this complex legal order, revealing only some guiding principles for Anishinaabe *inaakonigewin*. Elder Allan White explains that “Anishinaabe law is so vast that it could fill a series of encyclopedias.” White elaborates: “I don’t pretend to know Anishinaabe law, but what I do know I have heard from Anishinaabe knowledge holders. Knowledge holders still want to share with the people” (12). Relatedly, Craft notes, “*Anishinaabe inaakonigewin* can be seen as less prescriptive and positivistic than other forms of law. It is generally related by stories that provide lessons and meanings” (13). In what follows, I trace some of the stories that help identify the tenets that undergird Indigenous water laws, and explore how the lessons and meanings that these stories express work toward an understanding of the inherent rights of Indigenous peoples that has largely been foreclosed upon.

The central role of Indigenous women as water protectors or water keepers is one fundamental component of Indigenous water law across the Indigenous nations considered in this dissertation. Acknowledging that more research is required to fully articulate the unique role of Indigenous women in protecting waters in their nations, a

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<sup>20</sup> The concept of natural law is indeed a loaded term in Western legal discourse. As King’s quote above illustrates, Indigenous conceptions of ‘natural law’ come from a decidedly different genealogy and this important distinction will be explored further below.

number of recent community-based studies have examined the integral connections between women and Indigenous water responsibilities (Lawless et al. 2013; McGregor 2013; Anderson, Clow, & Haworth-Brockman 2013). Kim Anderson, Barbara Clow, and Margaret Haworth-Brockman write,

Understanding Aboriginal women’s perspectives is critical in the formulation of water management strategies, first, because Aboriginal communities in Canada are disproportionately affected by water quality problems and, second, because in many Aboriginal cultures, women are considered the holders of “water knowledge” and assume a primary role in the protection of water resources. (2013, 11)

In Anishinaabe tradition, for example, women are understood as the protectors and keepers of water (Simpson 2008; Bédard 2008). Michi Saagiig Nishnaabeg writer Leanne Simpson, in discussing the water responsibilities of Nishnaabeg<sup>21</sup> women explains how the “Nishnaabe-Kwewag learn about water through pregnancy and by giving birth”; she continues, “As we carry the children of our nation through our pregnancy ceremony, we carry them in water, and we become the water carriers” (2008, 205). Expressing how the role of Nishnaabeg women extends outwards to an interconnected hydrological understanding, she writes, “In our traditions, the Great Lakes are the liver and the kidneys of the land, filtering out contaminants and sending the water through the rest of the system. It is a system women have been honouring and protecting for countless generations” (206). While Simpson cautions against essentializing Indigenous women for the reproductive capacity (see Simpson 2011, 60), she acknowledges how they are

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<sup>21</sup> Simpson uses the eastern Manitoulin dialect of the Ojibwe language in her chapter, “Nogojiwanong: The Place at the Foot of the Rapids.” Nishnaabeg, Nishinaabeg, Anishinaabeg, and Anishinaabek (and Anishnaabe without the ‘i’) all translate to the “the people” in the dialects of the Ojibwe, Odawa, Potawatomi, Mississauga, Sauteaux, and Algonquin Peoples (Simpson, p. 211). I do my best to maintain the correct dialect of the work and peoples I draw from.

connected to a long and important tradition of water carriers given their unique ability to gestate life.

Integral to this sacred relationship between women's reproduction and water knowledge, is an understanding of how water is also instilled with agency within many articulations of Indigenous water law. Anishinaabe environmental scholar Deborah McGregor explains how Anishinaabek understanding "values the waters themselves as sentient beings in need of healing from historical traumas. Only when the waters are well and able to fulfil their duties to all of Creation is water justice achieved" (2013, 72). Nishnaabe scholar Renée Elizabeth Mzinegiizhigo Bédard similarly writes, "Traditionally, the Nishnaabeg people consider water to be our relative. . . . The sacredness of water is not separate from human beings" (2008, 96-97). These perspectives mark a significant departure from Western law, which conceptualizes water as a material thing that people hold rights to, rather than as an entity with which they are in relationship with. McGregor asserts that "Anishinaabe worldview. . . transcends this binary conception of water and expands notions of justice to include responsibilities to non-human entities and the waters" (72). In a report on Indigenous women and water health, drawing from eleven First Nations, Inuit, and Métis grandmothers, Kim Anderson asks the question, "What are we doing to foster our relationship to this powerful and complex entity?" (2010, 31). The fostering of what Dorothy Christian has called "being in the right relationship with water" (Christian & Wong 2017), in conjunction with the integral role of women as the protectors of this right relationship, are common themes across Indigenous nations, and can be understood as key organizing principles for Indigenous water law.

If we take the agency of water seriously, then the remaking of water worlds according to settler-colonial legal orders is not only to accord water new and dramatically constrained meanings, but to make water an object of Western environmental law. These same processes have sought to make Indigenous peoples, and Indigenous women in particular, subjects of settler law through gendered legislation such as the Indian Act.<sup>22</sup> Thus we can begin to understand how settler law makes both water and Indigenous women into governable subjects, unmaking Indigenous water worlds through the intricate connections between the two. The chapters that follow, and in particular, chapter three, explore the integral connections between Indigenous women, water's agency, and settler colonialism. In examining the significance of Indigenous women in Indigenous water law, I draw on Cheryl Suzack's conception of the political project of Indigenous feminism, which on one hand, shows "how systemic forms of oppression, such as [Western] law, adversely affect Indigenous women," and, on the other, illustrates "how gender identity represents the source of wide-spread incidences of violence against Indigenous women through cultural practices that amplify women's social, political, and cultural disempowerment" (2015, 261). One of my key aims in this project, then, is to consider the unique and integral position of Indigenous women within Indigenous water law, and in relation to the remaking of Indigenous water worlds.

The emphasis on a system of law that emerges through that which is understood as spiritual and natural, and which engages water as possessing its own agency is often challenging to interpret through a secular, Western lens. Indeed, the legibility of these legal orders is rooted in an ontology that requires deference and understanding, rather

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<sup>22</sup> See for example the work of Bonita Lawrence (2004), Dian Millian (2013), and Audra Simpson (2016) for work on the colonial relationship between Indigenous women and the Indian Act.

than mastery or translation into easily identifiable terms. As Borrows notes, “Like all legal systems, Indigenous constitutional structures were entangled with their broader life ways” (2017, 13). This complexity of legibility, however, should not foreclose upon attempts to reckon with what these different life ways express. To be sure, Indigenous worldviews and the legal structures with which they are entangled should not be defined by static versions of culture or tradition: “these structures were fluid and changed through time. They shifted, transformed, or retrenched in accordance with the ebb and flow of political, economic, and social considerations at play across the continent” (Borrows, 13-14). This is to say that while Indigenous water law may not always be easily legible outside of the cultural context from which it is enmeshed, its potential illegibility must also be understood as a condition of the supremacy of settler colonial common law and the rights regimes it upholds and deems representative of a singular body politic.

In a special issue of *Settler Colonial Studies* on Indigenous peoples, water, law, and entitlement, editors Stephen Turner and Timothy Neale assert that, “to get a clear view of water, and the indigenous context of its value, would require an abrogation or suspension of [the settler] government’s own authority. Only then, could water manifest itself as the living knowledge system of First law – the force of law of a long or longer inhabited land” (2015, 387). Turner and Neale’s claim exemplifies how it is indeed “a belated ‘settler’ law” that must be understood as “subject to pressures that it cannot countenance, or even articulate, given its own origin, terms and forms of administration” (387). They suggest further that “if water is to be taken seriously from an indigenous perspective it is obvious that the secondary and imposed governance of settler law occludes the already lawful reality, co-constituted by First peoples and land” (387). Thus,

where assertions of Indigenous people's water laws are not readily discernable, the problem of their discernibility must be considered, in part, as the result of the imposition of a belated settler colonial legal system and dominant liberal rights-based discourse that has rendered these worldviews and the laws with which they are enmeshed, illegible. If Indigenous peoples' inherent water rights are to be taken seriously, then so too must the broader legal orders that give voice to these rights.

### *Settler Colonial Studies*

My turn to exploring the relationship between water and Indigenous peoples' inherent rights must first reckon with the limits and implications of a dominant land-based discourse shaped by the historic and ongoing processes of settler colonialism which have rendered these rights largely illegible. As Pasternak notes, "These discourses have developed in distinct relation to the conjoined historical and structural imperatives of settler colonial governance: territorial possession and resource access" (2016, 318). To understand the basis of Indigenous rights policy in Canada, one prong of this dissertation is thus to explore the wider settler colonial contexts through which these policies are given rhetorical and material force. Settler colonial theory helps me to understand and trace the "ideological, structural, discursive, social, and political particularities of settler states" and how these particularities have shaped conceptions of land, water, and Indigenous rights in their image (Lafevre 2015, n.p). Patrick Wolfe's oft-cited formulation suggests that settler colonialism is not an *event* relegated to a historical moment of contact, but rather an ongoing *structure* that organizes settler presence

primarily around land and in relation to the ongoing attempted eradication of Indigenous peoples. Wolfe writes,

The primary object of settler colonialism is the land itself rather than the surplus value to be derived from mixing native labour with it. ... The logic of this project, a sustained institutional tendency to eliminate the Indigenous population, informs a range of historical practices that might otherwise appear distinct— invasion is a structure not an event. (1999, 163)

The role of settler colonialism as a field of study and analytic frame then, is to expose the often-taken for granted structures of settler societies and explore how these structures and their logics have shaped and continue to shape engagements between the settler state and Indigenous peoples.

Lorenzo Veracini differentiates settler colonialism from colonialism more generally, suggesting, “it was a typology of colonial action that depended on local circumstances and opportunities” (2010, 1). Rather than being merely extractive, as the logics of colonialism could be defined, *settler* colonialism is premised on “both a special sovereign charge and a regenerative capacity” (3). Relatedly, as Audra Simpson notes, “Settler colonialism is predicated on a territorial possession by some and, thus, a dispossession of others”; citing Wolfe, she continues: “In this model of colonialism, “the settler never leaves,” so the possession of territory requires the disappearance of “the native”” (2011, 205). This disappearance of “the native” and regeneration of the settler occurs through particular historical ideologies, cultural practices, and ontologies, which underpin influential philosophical notions about personhood, citizenship, and individual rights. Veracini summarizes the operation of these notions, writing, “on the one hand, the settler colonial situation is characterized by a settler capacity to control the population economy as a marker of a substantive type of sovereignty. . . ; on the other hand, this

situation is associated with a particular state of mind and a specific narrative form” (12). While I cannot provide a general or all-encompassing history of these settler colonial ideologies and the narratives that uphold them, I examine here a select history of the relationship between land, water, property rights, and the inherent rights of Indigenous peoples as these are expressed through several sites of conflict and their narrative representations to be examined in the following chapters.

Settler colonial theory is useful primarily in helping me to understand how it is that settler ideologies and ontologies around land, ownership, and individual rights became the dominating organizing framework for all of the lands and waters in what is now known as Canada, and more specifically, how this dominating framework becomes inscribed and upheld through law. How exactly did settler colonial “fantasies of entitlement” (Mackey 2016, 38) and “possessive logics” (Moreton-Robinson 2015) around property ownership and land dispossession so firmly root themselves on lands and waters already occupied by Indigenous peoples who possessed their own social, legal, and political structures? In responding to similar questions, Mackey highlights the significance of the doctrines of *terra nullius* and Discovery that were pivotal in justifying, and indeed legalizing the dispossession of Indigenous peoples’ lands, suggesting that they were “major sources of settlers’ fantasies of entitlement and certainty” (38). While the Doctrine of Discovery and *terra nullius* are not legal concepts adopted by settler states in always explicit terms, their ideological force is evident in the organizing of settler colonies and governance structures throughout centuries of European expansion.

Jodi Byrd, for example, describes the Doctrine of Discovery as that which “gave Europeans and by extension their agents in the new world a claim to native lands by the

physical act of discovery” (2011, 198). While the Doctrine of Discovery has its roots in Papal bulls sanctioning the conquest of non-Christian peoples and lands throughout the 15<sup>th</sup> and 16<sup>th</sup> centuries, Byrd identifies one of its most powerful legal mobilizations against the Indigenous peoples of North America as occurring through a 19<sup>th</sup> century U.S. Supreme Court decision. Citing Chief Justice John Marshall’s decision in *Johnson v. M’Intosh* in the United States Supreme Court in 1823, Byrd describes Marshall’s emphasis on and reinforcement of the Doctrine of Discovery within legal conceptions of American sovereignty:

In a stunning moment of law-making and law-preserving violence, the U.S. government juridically transformed native nations from sovereign foreign states, whose government and lands were independent of U.S. control, into domestic dependent nations existing within the boundaries of the United States and occupying, by grace of their guardian’s permission, lands that rightfully belong to the United States. (198)

While *Johnson v. M’Intosh* enshrined the ideology of the Doctrine of Discovery into American legal assertions of sovereignty over Indigenous lands, Mackey notes how “Canadian courts still consistently cite Marshall in *Johnson v. McIntosh* to support the legal presumption of Crown sovereignty”; she continues, “Indeed, that legal decision is seen as ‘the *Locus classicus*’ of principles governing Aboriginal title in settler nations” (43).

Underpinning decisions like Marshall’s, and the subsequent use of the Doctrine of Discovery logic in settler legal systems and ideological assumptions about ownership and entitlement, is the broader philosophical and persistently influential concept of *terra nullius*—land belonging to no one. *Terra nullius*, in many respects, was the ideological basis for the establishment of Western property regimes, and the conceptions of citizenship and individual rights that flow from them. If the Doctrine of Discovery sought

to ensure that the peoples of Turtle Island could not be self-determining independent nations, the concept of *terra nullius* was mobilized to solidify their inability to own the lands that they had consistently occupied, thus further preventing their achievement of the rights of property holding individuals under ensuing settler law. And yet, in recent decades, legal historians have cast doubt on the concept of *terra nullius* as an explicit means of justifying dispossession in settler colonies.<sup>23</sup> Many scholars have rightly identified the “legal fiction of terra nullius” (Moreton-Robinson 2015, 66), and that in fact “the term *terra nullius* was not used to justify dispossession” during the settlement of Indigenous lands (Fitzmaurice 2007, 2). However, while historical record of the term itself is not as prominent as sometimes thought, the logic and ideology of *terra nullius* was and remains a powerful means of justifying the dispossession of Indigenous peoples’ lands. As Andrew Fitzmaurice notes, *terra nullius* was “produced by the legal tradition that dominated questions of the justice of ‘occupation’” and can be understood as a “product of the history of dispossession and the larger history of European expansion” (2). Aileen Moreton-Robinson similarly asserts that, “The application of the legal fiction of terra nullius (“land belonging to no one”) was tantamount to the recognition of British sovereignty and the subsequent investment of property rights in men” (2015, 66).

This investment of property rights in some “men” over others occurs through a distinctly Western European tradition and conception of individual rights that arise

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<sup>23</sup> The majority of this work has emerged from the Australian legal studies context. See for example, David Ritter, 'The "Rejection of terra nullius" in Mabo: A Critical Analysis', *Sydney Law Review* 18, no. 1 (1996); Kate Beattie, 'Terra Nullius and the Colonisation of Australia' (BA Honours thesis, University of Sydney, 1998); Michael Connor, *The Invention of Terra Nullius: Historical and Legal Fictions on the Foundation of Australia* (Sydney: Macleay Press, 2005); Bain Attwood, 'The Law of the Land or the Law of the Land?: History, Law and Narrative in a Settler Society', *History Compass* 2 (2004); Fitzmaurice, 'The Genealogy of Terra Nullius', *Australian Historical Studies* 129 (2007).

through ideologies of *terra nullius* and philosophies of natural law, and which effectively render existing Indigenous conceptions of land tenure illegible. Drawing on the genesis of Western property regimes as those rooted in Roman and more generally, natural law, Mackey explains how in the “legal story about entitlement the term “vacant”—as in *terra nullius* (vacant land)—does not . . . imply “empty.” Instead it indicates something that is in a “natural state of freedom” (wild, uncultivated), and is *not governed by human control*” (2016, 45). In a markedly contrasting articulation of natural law from Indigenous conceptions discussed above, Fitzmaurice elaborates on the tenets of Western natural law and its relation to the concept of *terra nullius*, writing, “One of the foundational stones of natural law was the principle that anything that belongs to no one becomes the property of the first taker”; he continues, “This assumption is fundamental to the understanding of property in Western cultures. It was used to justify colonisation in a vast spectrum of different circumstances, producing the argument that indigenous peoples had not exploited nature sufficiently for them to have created extended property rights, let alone sovereignty” (2006, n.p). The ideological premise of *terra nullius* then, is that while a distinct group of people were indeed occupying the land, they could not possibly have *owned* the land because they had not exploited it to the point of property. Further, where land ownership is deemed the precondition for the recognizability of coherent governance structures under Western law (premised on natural law), Indigenous occupants could also not possess self-determining sovereignty. These moves to vacate Turtle Island of sovereign Indigenous bodies occurred and occurs through complex theories of governance, ontologies of land ownership, the rights regimes that become enshrined in

settler common law, and the broader ideologies of *terra nullius*, the Doctrine of Discovery, and natural law that have upheld them across time and space.<sup>24</sup>

It is important to reiterate here that this mobilization of natural law and its corollary of *terra nullius* to justify dispossession of Indigenous lands is rooted in a much different tradition than the natural law cited in articulations of Indigenous legal orders above. Western conceptions of natural law undermine Indigenous legal orders, which draw on different philosophical and ontological traditions. The move to empty the land of existing inhabitants, at least insofar as they could stake a claim to their land as legally recognized property-owning citizens, “meant that Indigenous relationships to land had to somehow be defined as inferior” (Mackey, 48). Through the philosophical assumptions that undergird Western property regimes and individual rights, Indigenous peoples’ systems of governance and land tenure were reduced to, misrecognized as, and actively disavowed as that which existed in a state of nature, as wild, and uncultivated—as property-less. While different conceptions of natural law and their emergence through distinct ontological perspectives will be explored below, it is useful to further understand how settler colonial notions of private property and the rights of the liberal individual have come to structure the legibility of Indigenous rights in Canada, and more specifically, how these taken for granted relationships to land and individual rights have

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<sup>24</sup> Indeed, there is an important argument to be made here about the relationship of water to the transportation of settler colonial ideologies and legal orders onto Turtle Island. While thinking through water in relation to the ocean is beyond the scope of this dissertation, Renisa Mawani has done integral work on thinking settler law through “maritime worlds.” Mawani writes, “Situating law and settler colonialism within maritime worlds highlights the imperial circulations of legal regimes—including colonial and racial systems of surveillance, criminal laws, and forms of private property—that traveled transoceanically with colonial bureaucrats and imperial subjects, in their efforts to deracinate and subjugate indigenous and colonial populations. Centering oceans invites an analytic repositioning that emphasizes global thinking beyond nation-states and across imperial divides” (2016, 109).

extended to settler colonial engagement with and management of water under the conditions of the settler nation state.

### *Settler Liberalism and the Sacred Right of Property*

Political theories of governance premised on state of nature arguments are co-constitutive with the broader concept of *terra nullius* and have supported racialized rationales that have consistently been used to dispossess Indigenous peoples of their lands and undermine their legal and governance structures (Fee 2015; Mackey 2016, 48). The theories of governance offered by political philosophers Thomas Hobbes (1588-1679) and John Locke (1632-1704) are foundational to the realization of settler colonial governance in Canada and while I will touch on these theories briefly, I am most interested in how the liberal individual becomes the dominant marker of rights legibility in Canada and how this legibility organizes the lands and waters of the settler nation, circumscribing the inherent rights of Indigenous peoples and the water worlds that they give voice to. Indeed, Hobbes and Locke cannot be separated from the broader ideologies of *terra nullius* and the philosophy of natural law, which their governance philosophies carried forward into the colonization of the Americas. Further, and more specifically, drawing on theories of liberalism, I assert that Hobbes' and Locke's philosophies of governance must be situated within the establishment of a distinctly liberal order on colonized lands. As I will show, it is this liberal order that has structured both settler approaches to water from the early 19<sup>th</sup> century onward, and which has foreclosed upon the legibility of Indigenous peoples' inherent rights and Indigenous approaches to water governance and management.

The political governance philosophies of Hobbes and Locke are imperative to understanding the enlightenment thinking that “operated discursively to inform theories about the rights of man within the context of the rise of democracy” (Moreton-Robinson, 56). As Moreton-Robinson notes, they “developed their ideas of the state of nature using the American Indian as the quintessential example of ‘humanity living in its pure, unadulterated savage state’” (Williams 2005, qtd. in Moreton-Robinson 2015, 56). While the theories of Hobbes and Locke are not identical or even always commensurable, I am less interested in the distinctions between the two than their combined influence on the establishment of property and the individual rights-bearing citizen in the settler state, and in a manner that was explicitly differentiated from the Indigenous inhabitants already living there. Citing C.B. Macpherson’s pivotal study of liberalism from Hobbes to Locke, E.A. Heaman writes, “Hobbes placed modern man in the marketplace, characterizing him as an owner of himself within a competitive market-oriented society, whereas Locke enshrined property as the major *raison d’être* of society” (Heaman 2009, 149); as Locke asserted, “The great and chief end, therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property” (qtd. in Heaman, 149). Between Hobbes and Locke we see the philosophical justifications for the installation of settler governance structures along with the establishment of private property rights as the marker of self-determining citizenship in the settler state. As will be examined throughout and with particular attention to water, the establishment of these structures is enacted in explicit and implicit opposition to existing Indigenous structures of land and water tenure and nationhood.

Hobbes' social contract theory set the stage for a rights regime in the "new world" premised on the necessity of a settler colonial governance structure and common law. His assertion that life without the modern state was "poor, nasty, brutish, and short" helped to foster the conditions and thinking for the imposition of Western governance and social ordering practices over those of the existing Indigenous populations (See *Leviathan* 1651). Mackey elaborates: "Hobbes' social contract theory suggests that to escape the uncertain state of nature, people form a social contract in order to establish a civil society beneath a sovereign authority" (48). It follows that if Indigenous lands were "a state of nature" they could not be "*governed by human control*" and thus were *terra nullius* and "open to the first taker," according to natural law (Mackey, 48-50, emphasis in original). If the power of Hobbes' philosophy over the formation of the Canadian state is abstract in this formulation, one need only look to chief justice Allan McEachern's 1991 decision in the precursor to the landmark Indigenous land rights case, *Delgamuukw v B.C.*, where McEachern struck down the Gitksan and Wet'suwet'en First Nations claim to their territories, describing in his decision the life of First Nations before colonization as "nasty, brutish, and short" because they had "no written language, no horses or wheeled vehicles" (Mulgrew 2017). Indeed, Hobbesian state of nature logic solidifies the ideology of *terra nullius* in the settler consciousness, where it persists as justification for the continued colonization of Indigenous lands and ways of life. I will explore how this thinking has undermined Indigenous water governance in particular, in chapter one and two below.

If Hobbes was fundamentally concerned with the necessity of the sovereign power of modern state governance, then Locke's "Second Treatise of Government"

(1690) sought to identify property rights as *the* inherent and inalienable right of all men—albeit and of course with certain exclusions. While unlike Hobbes, Locke believed that property rights pre-existed government, and that an individual could own property even “in a state of nature,” his logic ensured that these rights would not extend to Indigenous peoples since they had not converted the land into property through their labour in a way recognizable to Locke’s enlightenment thinking. Locke’s sentiments warrant quoting in full:

Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this no body has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labor something annexed to it, that excludes the common right of other men. For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others. (27)

By instilling property rights in individuals—those which were constituted at the time of settlement exclusively as white European men (see Perry 2009)—and which are then transferred into the soil through their labour, Locke effectively gives voice to the settler “logics of possession” that persist through the settlement and colonization of Turtle Island. From forced and nefariously negotiated land transfers, to stipulations under the Indian Act, to the ongoing dispossession of Indigenous land and water rights, the presumption of the settler’s “sacred right to property” on Indigenous lands —what Mackey calls “settler certainty”—is the basis of state engagements with Indigenous peoples in the settler nation. Hobbes and Locke can be understood as helping to usher in a liberal enlightenment thinking into the “new world” that would become North America.

Indeed, the logics of possession they have given voice to can be encapsulated under, and especially in the Canadian context, dominant forms of settler liberalism that foreground the centrality of the rights bearing (male and white) citizen, and situates the inalienable rights of private property as the premise for self-determining authority in what was to become Canada.

Building upon and moving beyond Hobbes and Locke, here, and in the chapters that follow, I rely heavily on Canadian historian, Ian McKay's "liberal order framework" (2000), and its subsequent engagements (Constant & Ducharme 2009). Published in the *Canadian Historical Review*, in what has been referred to as a "ground-breaking article," McKay's "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," argues that we should understand Canada not as "an essence we might defend or an empty homogenous space we must possess," but rather as an ongoing "project of liberal rule" (McKay, 620-621).<sup>25</sup> McKay examines the power relations that helped established the liberal order in Canada from the period following the rebellions of Upper and Lower Canada in 1837 and 1838, up until about the Second World War, suggesting that the establishment of the liberal order was most prominent between 1840 and 1940. McKay asserts that, "Canada as a project can be defined as an attempt to plant and nurture, in somewhat unlikely soil, the philosophical assumptions, and the related political and economic practices, of a liberal order" (623).

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<sup>25</sup> While I mobilize McKay's liberal order framework to examine the relationship between dominant liberal governance structures and the delimitation of Indigenous rights in Canada, there have subsequent engagements with the limits of McKay's framework as a totalizing model for understanding governance in Canada more generally. A number of these engagements are captured in Jean-Francois Constant and Michel Ducharme's 2009 edited collection *Liberalism and Hegemony*. McKay has also expanded and nuanced his framework in his 2005 *Rebels, Reds, Radicals: Rethinking Canada's Left History*. I am less interested the overarching history of Canadian governance than I am in its engagement with Indigenous rights discourse, which I assert can be best understood through dominant settler colonial ordering practices premised on the tenets of liberalism.

While McKay's understanding of liberal ideology is not unique in and of itself, his assertion of its established primacy within the Canadian national project cuts through sociocultural, political, and historical debates about the foundations of the Canadian nation state. His liberal order framework treats liberalism not merely as a political stance, historical movement, or set of policy decisions; rather, as McKay asserts, "The liberalism that a liberal order sought to install as the structured and structuring principle of both public and private life is, in this reconnaissance of Canadian history, something more akin to a secular religion or a totalizing philosophy than to an easily manipulated set of political ideas" (624). Elizabeth Povinelli similarly writes, "Liberalism is not a thing. It is a moving target developed in the European empire and used to secure power in the contemporary world. It is located nowhere but in its continual citation as the motivating logic and aspiration of dispersed and competing social and cultural experiments" (2006, 13). I try to follow the moving target that is liberalism as it has secured and continues to secure power over Indigenous peoples and their waters on Turtle Island.

If perhaps, as McKay himself admits, an overly totalizing framework, the liberal order is useful for bridging understandings of the role of private property in the formation of the settler subject, and how its centrality flows first, into the colonization of Indigenous lands and peoples, and later, into settler land and water rights policy, and engagement with Indigenous rights in our contemporary moment. Conceptualizing the Canadian nation state as a fundamentally liberal project allows me to read how these ideological presumptions persist across space, time, and through various textual and cultural articulations. To be sure, McKay himself describes the liberal order framework as a "reconnaissance of Canadian history" and one which, "can be conveyed only

partially and telegraphically” and which “entails seeing how far and how complexly this principle of liberal order functioned across the wide array of social formations and territories that ultimately cohered, from the 1860s to the 1890s, into the Dominion of Canada” (637). I follow McKay’s notion of reconnaissance, and ultimately seek to trace how a dominant liberal ideology has structured, and continues to structure Indigenous water rights in the settler state.

The liberal order framework is particularly useful for understanding the establishment of land rights in settler Canada and how this emphasis on private property, land, and the liberal individual structured settler engagements with water, Indigenous peoples, and then Indigenous peoples water rights. Drawing on the liberal philosophies of Hobbes and Locke, McKay suggests that, “a liberal order is one that encourages and seeks to extend across time and space a belief in the epistemological and ontological primacy of the category ‘individual’” (623). While McKay focuses on three related fundamental principles of liberalism that take root in Canada and extend from the centrality of the individual (liberty, equality, and property), “his model places special emphasis on the sacred and unalienable liberal right to property, beginning immediately with the possession of the self” (Ducharme & Constant 2009, 7). In the introduction to their edited collection on McKay’s liberal order framework, Michel Ducharme and Jean-Francois Constant elaborate: “The right to property trumps all other rights within liberal philosophy because property is interpreted as the ‘the precondition of a liberal’s identity’” (7). My first chapter extends this focus on the “sacred and unalienable liberal right to property” to explore how early settler writers and so-called environmental policy perpetuated a framework that sought to constrain and contain water within liberal

conceptions of private property and capital accumulation, as they actively disavowed pre-existing approaches to land tenure and water management. Indeed, as I have highlighted above, in order to understand water in the settler state—what we might consider the making of a settler water world—it is useful to understand liberal engagements with land and how they extend to environmental and water policy, as well as how these policies worked and work to negate or actively destroy Indigenous water worlds.

The liberal order framework is further integral for understanding how Indigenous conceptions of collective rights, legal orders, and approaches to land and water were negated and violently disavowed in the settler landscape. While proponents of liberalism often celebrate its inclusive ideology—that the foregrounding of the rights bearing citizen is a useful and necessary concept in relation to the powers of the state; that notions of “equality” and “freedom” are inherently positive; that citizenship is the necessary marker of these notions—McKay and countless other scholars have shown the limits of liberal ideology. To be sure, McKay’s liberal order, and liberalism more generally, is marked by its exclusions and exceptions. As Adele Perry succinctly puts it, “Globally and locally the liberal order project was predicated on the privatization of women and the relegation of non-Western peoples to various states of reduced humanity, savagery, unfreedom, or containment”; it then follows, according to Perry, that “imperialism and patriarchy were not complications of or exceptions to the liberal order: they were necessary to its very production” (2009, 275). As Perry points out, drawing from philosopher Charles Mills, liberal thinkers resolved “the contradictions between claims to individuality and equality . . . and the presence of systemic and highly racialized inequality” via what Mills calls the “racial contract”: “the belief that white peoples had more and different rights than non-

white peoples”—a belief that operates as an extension of the state of nature ideology perpetuated through Hobbes (277). The logics of this racial contract are evident throughout almost two centuries of “Indian” policy—from the reserve system, to residential schools, and the Indian Act—that sought to dispossess Indigenous peoples of their lands and their self-determining authority.

While the racial contract is certainly not limited to Indigenous peoples,<sup>26</sup> state engagements with indigeneity in settler Canada lays bare the racial borders of the liberal project. In the settler nation, Indigenous peoples, constructed as “savages,” provided the central figure against which the white male liberal autonomous subject could construct itself. As Dian Million states, “To articulate indigenism directly questions what western nation-states believe is the political subject of their liberal order” (2013, 3). McKay considers this fact in his liberal order framework, suggesting that a critical reconnaissance of the operation of a liberal order in Canada “would mean a reevaluation of Ottawa's handling of the 'Indian Question' as not just a series of misunderstandings, premised on a distanced misreading of Native societies, but rather as a fulfilment of liberal norms, which required the subordination of alternatives” (637). While the establishment of the liberal order and its relation to Indigenous peoples is explored in the first chapter, and in various ways throughout, this dissertation is predominantly concerned with how particular forms of settler colonial liberalism render the inherent

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<sup>26</sup> Perry points out how the liberal order framework initially excluded women as property owning citizens (2009). Jennifer Henderson’s *Settler Feminism and Race Making in Canada* (2003) elaborates this point in great detail while highlighting the many nuances of women’s relation to settler liberalism. Indeed, as I will show through the writing of Catharine Parr Traill, white women’s ambiguous positioning in relation to liberal subject-hood often implicated them in the settler-colonial project in particular, albeit circumscribed ways. Liberal ideology also worked throughout Canadian history to exclude various marginalized peoples and people of colour. From the Chinese Immigration Act (1885; 1887; 1892; 1900; 1904; 1923), to the Continuous Journey Regulation (1908), to the Komagata Muru incident (1914), to Japanese Internment policies (1941-1949), the liberal Canadian state is marked by its racial exclusions.

rights of Indigenous peoples illegible and how this illegibility has and continues to limit Indigenous approaches to water.

Where McKay's liberal order framework is useful for understanding how liberal ideology took root on Turtle Island, and how it ordered the settler landscape, waterways, and Indigenous peoples who inhabited them, as I move into chapter two, I augment the liberal order framework with more contemporary and critical approaches to liberalism. Namely, I mobilize Elizabeth Povinelli's concept of "late liberalism" in order to examine the potential cooptation of Indigenous legal orders and worldviews under a liberal Canadian framework of recognition and multiculturalism.<sup>27</sup> Povinelli writes, "I us[e] the phrase late liberalism to describe a topological twist in the governance of difference—the emergence of a new tactic of the liberal governance of difference around the late 1960s and early 1970s usually referred to as liberal forms of social and cultural recognition or state multiculturalism"; she continues, "We were not seeing a break or rupture in liberalism but rather a realignment of a strategy of governing difference" (2017, n.p.). As the state tries to both manage and capitalize on difference through policies of multiculturalism and limited forms of recognition in the latter half of the 20<sup>th</sup> century and into our contemporary moment, the tenets of liberalism become ever more inclusive, so long as difference can be recognized and celebrated as extensions of universalist liberal

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<sup>27</sup> While I focus on the operation of liberal state governance throughout this dissertation, largely because I contend that the liberal state remains ever present in Indigenous rights claims, the transition to neoliberal forms of governmentality cannot be understated in our moment of global capitalism. Where neoliberalism sees the state retreat from its traditional roles as protector and provider of various liberal social contracts, there is a transition from emphasis on the public good, to that of personal responsibility. As Jennifer Henderson writes, "Neoliberalism's dismantling of social entitlements and decomposition of publics to produce populations of individuals made responsible for their own, and certain others', welfare has required profound shifts in the language of politics and the nature of social imaginaries" (2012, 302). This narrative of responsibility is exceptionally prevalent in relation to state engagements with Indigenous peoples and will be touched in on in various contexts through.

ideals, albeit never politicized.

Late liberalism, and its corollaries of liberal multiculturalism and a liberal politics of recognition are useful in understanding the limits of state sanctioned Indigenous rights policy. Under late liberalism, such policies regulate the legibility of Indigenous peoples' rights, and the legal orders and worldviews from which they are derived in terms that can be deemed recognizable within the confines of liberal governance structures. Jennifer Henderson describes a kind of settler liberalism that affectively and materially disembods historical wrongdoing from the broader context and frameworks of Canadian settler colonialism; in so doing, liberal discourses of progress and improvement supersede the material conditions that might lead to the "restitution of powers, the jurisdictions, the lands necessary for the Indigenous to live as distinct peoples" (2015, 31). Through "the subtle and mobile powers of liberal inclusionary forms of national imagining and national culture," to draw again from Mackey, settler liberalism thus mobilizes liberal forms of governmentality toward the disavowal of ongoing processes of settler colonialism (2016, 5).

Povinelli similarly encapsulates this problem, while offering a caution against superficial engagements with Indigenous law, writing, "As the nation stretches out its hands to ancient Aboriginal laws . . . indigenous subjects are called on to perform an authentic difference in exchange for the good feelings of the nation and the reparative legislation of the state" (2002, 6). State jurisdictional sovereignty remains unchecked in this formation, as the inherent rights of Indigenous peoples and the water worlds they give voice to are relegated to tokenistic participation in the dominant settler colonial structure, or as mere cultural performance under the banner of liberal inclusion. Jodi Byrd

highlights the insidiousness of such forms of liberalism in the United States:

As liberal multicultural settler colonialism attempts to flex the exceptions and exclusions that first constituted the United States to now provisionally include those people othered and abjected from the nation-state's origins, it instead creates a cacophony of moral claims that help to deflect progressive and transformative activism from dismantling the ongoing conditions of colonialism that continue to make the United States a desired state formation within which to be included. (2011, xvii)

In the chapters that follow, I trace the progression of the liberal order to late forms of liberalism as they are expressed first through settler logics of possession and the sacred right to property in the 19<sup>th</sup> century, to seemingly progressive settler environmental literature and policy that largely works to further undercut substantive politics toward the realization of Indigenous peoples' inherent rights and the remaking of Indigenous water worlds.

### *The Limits of Settler Colonial Theory*

While settler colonial theory is a useful means of tracking the historical and ongoing processes of colonialism of settler states such as Canada, as a mode of inquiry, there is also the risk that it renders settler colonialism a “structural inevitability” (Macoun and Stakosch 2013, 426). As Macoun and Stakosch state, “By emphasizing continuities in colonial relationships between the past and the present, [settler colonial theory] can depict colonization as structurally inevitable, and can be deployed in ways that reinscribe settler colonialism” (439). “The particular challenge of [settler colonial theory's] analysis,” then, “is that it does not give an account of . . . a transformed future, or of the conditions for settler colonialism's demise. This can lead to a theoretical and political impasse and result in a kind of colonial fatalism” (436). While I read the ways that settler

colonial liberal and neoliberal governance and material ordering practices attempt to order Indigenous waterways and set the terms of Indigenous rights through a number of texts and sites of analysis, I do not presume that settler colonialism is impermeable. Further, my concern with ‘the settler state’ is not intended to reify its structural powers, but rather to better understand their origins and the challenges the state form poses for Indigenous rights. This project is ultimately concerned with the ways that Indigenous relations to water and assertions of water law work to upend the presumed power of settler colonialism – how Indigenous hydrosocial relations and water law resolutely point toward a transformed future that push against and beyond the confines of the settler state.

With this in mind, a note on my reading practice in relation to my mobilization of settler colonial theory is also warranted. Emily Cameron cautions against the limits of what she calls “postcolonial approaches to the narrative dimensions of colonization.” She continues:

In taking seriously the role of stories in colonized and imperial formations, colonial and postcolonial scholars have tended to assume that the ideas and relations they can diagnose in stories are themselves the scope and terms of colonization, as well as the appropriate terrain of anti-colonial struggle. They have tended to rely too heavily on a theoretical rendering of colonial relations in which colonized and colonizer occupy agonistic, placeless, timeless positions, and in which colonial texts are invariably understood to be hegemonic. They have overemphasized the representational and have underestimated the messy, material, placed contexts in which colonial relations are continually made and unmade. (23-24)

Where below I read the work of Catherine Parr Traill, for example, in order to understand the trajectory of the colonial ordering of the waterways of the Mississauga Anishinaabe, it is true that I read for the antagonistic positioning of Traill’s seemingly benign, practical domestic narrative; I do not probe the messiness of the colonial relations in Traill’s time, and indeed this imaginative work has been taken-up elsewhere, namely in Daniel

Coleman's 2013 article, "Grappling with Respect: Copway and Traill in a Conversation that Never Took Place." Instead, I connect Traill's presumptions about the waning of Anishinaabe wild rice harvesting in the 19<sup>th</sup> century to the contemporary "Wild Rice Wars" ongoing within the Trent-Severn Waterway. That "wild rice is Anishinaabe law," as I begin my first chapter—that it has remained Anishinaabe law as the Mississauga Anishinaabe continue to assert their wild rice harvesting rights—is intended to illustrate that settler colonialism and its subjectifications have never been hegemonic in the waterways of Turtle Island. My focus on the structural impositions of settler writers like Triall and her counterpart J.W.D Moodie is not intended to represent the whole scope of colonialism, but rather its powerful and pervasive articulations that indeed represented major impositions onto the waterways of Indigenous nations such as the Anishinaabe. As such, my analysis throughout this project moves from an examination of the structural imposition of settler colonialism on the waterways of Turtle Island, to an exploration of the Indigenous storytelling, enactments, the material and placed contexts in which "colonial relations are continuously made" and more importantly, persistently unmade.

### *Worlding and Ontology*

Returning to the central focus of this dissertation, another prong of my theoretical framing has to do with the underlying taken for granted presumptions that organize Western rights, water, and water rights. As I have discussed above, a fundamental hindrance for the legibility of Indigenous peoples' inherent rights, and the realization of Indigenous water law more specifically, is the imposition of Western worldviews, rights regimes, and the legal systems that uphold them, onto Indigenous lifeways. More is at

stake in the relationship between Indigenous and non-Indigenous peoples in the settler state than merely competing or incommensurable *perspectives* of water; rather, as the title of my dissertation suggests, settler colonialism is implicated in the ongoing worlding and unworlding of the colonized landscape. Material worlds are both created and disavowed through particular framings of rights, and how these rights shape interactions between people and the natural environment. In short, in order to understand fully the implications of the unmaking of Indigenous water worlds, and the ongoing inability to reckon with the legibility of Indigenous peoples' inherent rights, part of my task in this dissertation is to consider the problem space of ontology: how worlds become materially constructed, deconstructed, misrecognized, or treated superficially under settler logics of possession and a liberal politics of multiculturalism and recognition.

I borrow the concept of worlding first from Heidegger, and then more specifically from Mario Blazer, among other contemporary theorists who have adapted Heidegger's thinking. In Karsten Harries' critical commentary on Heidegger's "The Origin of the Work of Art" and drawing also from the concept of world he develops in *Being and Time*, quoting Heidegger, Harries writes, "World may not be understood . . . as "the mere collection of the countable or uncountable, familiar and unfamiliar things that are just there." It is not to be understood as the totality of facts. . . . World here names a space of intelligibility or significance that determines the way human beings encounter persons and things" (2009, 101). Drawing on Heidegger's concept of the 'worlding of a world,' Harries continues, "By the opening up of a world, all things gain their lingering and hastening, their remoteness and nearness, their scope and limits. In a world's worlding is gathered that spaciousness out of which the protective grace of the gods is granted or

withheld” (113). While I have no intention, nor space here, to delve into Heidegger’s complex language and philosophy, I find his concept of worlding useful for understanding the linkages between ontology and rights, and between matter and meaning. The process of worlding helps us consider that there is no singular, matter of fact “world.” Worlds are worlded in particular ways, through various “spaces of intelligibility” that determine how different people will encounter something like water, for example. Further, the organization of a world, the means through which it is worlded, determines its “scope and limits,” what or whom is protected or left unprotected. Indeed, as Gayatri Spivak has done in her postcolonial feminist work, I likely offer a “vulgarization of Martin Heidegger's idea” of worlding here (Spivak 1985, note 1); however, even this vulgar engagement with his concept helps me to further understand the stakes and often incommensurability of Indigenous rights issues in the settler state—how settler colonial unworldings of Indigenous landscapes and waterways delimit the space of intelligibility that would allow Indigenous water law and inherent rights to flourish.

In a special issue of the journal *cultural geography*, Emilie Cameron, Sarah de Leeuw, and Caroline Desbiens raise important considerations for the increased interest in the relationship between Indigeneity and ontology. In relation to the field of geography they ask, what “does it mean to attend to the ‘ontological’ in studies of Indigenous practices and politics, particularly at a moment when geographers remain overwhelmingly non-Indigenous” (2014, 20)? This question extends to non-Indigenous scholars such as myself, working at the intersections of literary, cultural, settler colonial, and Indigenous studies. Cameron, de Leeuw, and Desbiens probe further, “What is at

stake in the uptake of Indigenous ontologies as sources of evidence for broader theoretical inquiry, and in what ways might a . . . turn toward Indigenous ontologies retrench, rather than redress, colonial forms of knowledge production” (20)? These questions are at the forefront of my ontological considerations in this project. As Dorries and Ruddick suggest, “Violent misuses of Indigenous thought are predicated on a perspective which refuses to see Indigenous epistemologies and worldviews as valid philosophies in their own right, and instead merely seek to identify points of resonance and similarities between Indigenous and Western modes of thought” (2018, 2). To be sure, this project is not concerned with identifying the similarities between settler and Indigenous water worlds, but with the relational space that demand these distinct worlds be in engaged despite their differences. In Blaser’s terms, “the challenge is not to catalogue and confirm different forms of worlding,” but to “engage the pluriverse as a ‘heuristic proposition, . . . an experiment in bringing itself into being’ (Blaser 2014, qtd. in Cameron, de Leeux, & Desbiens 2014, 22).

Consideration of how different water worlds, settler and Indigenous, are, or might be worlded, along with the relationship between these often-distinct worlds, allows for a deeper understanding of the ontological limits and potential of engagements with water under the conditions of the settler state. Anthropologists, environmental historians, and geographers increasingly emphasize the material, social, cultural, political, and spiritual dimensions of water—that how water is conceptualized occurs within a multitude of distinct contexts and ontological perspectives (Bakker 2004; Linton 2008; Matsui, Berry, Cohn, and Jackson 2016; Strang 2013; Swyngedouw 2004). In their introduction to a special issue of the *Social Studies of Science*, Jessica Barnes and Samer Alatout

foreground the significance of understanding “water worlds,” writing, “water is multiple, not only in its meanings, but more importantly, in its very materiality” (2012, 484). They continue, “From this perspective, water is not a singular object of epistemology for which abstract knowledge can be produced and circulated in all times and places without interruption. Its properties are not fixed. Rather, water reveals its complex, multilayered biophysical identities for particular enactments, depending on assemblages that are in place or still in the making” (484-485). Indeed, as I have touched on and as I will show in subsequent chapters, water can be a border or an entry way, it can be the means of nation building, and the regeneration of settler logics of possession, it can connect culture, history, and communities, give voice to law and rights regimes, and be the material that empowers particular forms of spirituality, cultural health, and practice. The ways in which water is worlded—the ontologies that structure, organize, and delimit its engagement and articulations—have material, political, and social ramifications that must be reckoned with in order to realize the inherent rights of Indigenous peoples and the water laws that give voice to these inherent rights.

In considering the material, political, and social stakes of worlding watery landscapes in the image of settler colonialism—how water becomes apprehended and folded into the particular and often problematic structures of settler colonialism—part of my task in this dissertation is to pay “close attention to water’s multiple ontologies” (Barnes & Alatout, 486). As Barnes and Alatout state, “The emergence of these ontologies, and the ways in which they are variously cemented, contested, and discarded is closely tied to the production of social worlds” (486). While I cannot account for all of the distinct ontological perspectives of and around water, I highlight some common

conceptualizations that illustrate the general discrepancies between Indigenous and settler water worlds. As I have mentioned, there is no singular Indigenous water world, with settler water worlds similarly possessing a multitude of complex articulations—indeed, these water worlds are never quite mutually exclusive in the settler state; still, highlighting the overarching discrepancies between the ordering practices of these two generalized worlds allows for a better understanding of the ongoing illegibility of Indigenous water rights issues under the conditions of the settler state.

### *Settler Hydrosocial Relations*

The worlding of water is fundamentally organized in and through the social relations between humans and between humans and their non-human environment. As such, one means of offering a generalized and politically useful portrait of settler and Indigenous water worlds is through an exploration of various social relations to water and the social and material worlds that these relations construct. Water's relation to the social has been variously considered across time, cultures, and between disciplines. Natural scientists tend to speak of the "hydrological cycle" to describe interactions between water and various environments, including social environments (Bakker 2012; Schmidt 2014; Linton 2010), while political ecologists, geographers, anthropologists, and critical theorists often speak of the hydrosocial, or socio-natures, to emphasize water's role in society, and society's role in water (Krause and Strang 2016; Neimanis 2013; Rattu and Véron 2016; Schmidt 2014; Strang 2013; Swyngedouw 2004). In their 2014 article on the "hydrosocial cycle," Jamie Linton and Jessica Budds examine the integral relationships between society and water. To attend to the hydrosocial, they explain, is to "shift from

regarding water as the object of social processes, to a nature that is both shaped by, and shapes, social relations, structures and subjectivities” (2014, 170). Similarly, Nicole J. Wilson, in her community-based research with the Koyukon Village of Ruby, Alaska, explores the “sociocultural relations to water that differ from mainstream Western perspectives and [the] community strategies to protect them” (2014, 1). She identifies the “hydrosocial” as a key concept for illuminating “the similarities and differences in sociocultural and material relations to water between and among human communities and the conflicts that may occur as a result of the differences” (6). For Wilson, these conflicts arise between the use and value placed on water within Indigenous communities, such as the Athabaskan peoples of Ruby, and the Western mainstream, “which views water as a resource available for human exploitation, rather than a living entity with which they are engaged in reciprocal relations of respect” (6). The hydrosocial includes “the built (or ‘artificial’) as well as ‘natural’ environments, emphasizing the fact that water connects individuals not only politically and socially but also materially” (Bakker 2012, 620). Given the necessary relationality between Indigenous and non-Indigenous relationships to land, water, and to one another in Indigenous rights issues in a settler colonial nation state such as Canada, the hydrosocial is a useful concept for exploring the various constructed, constituted, and contested social relationships to water between and across Indigenous and settler populations and communities.

Dominant Western conceptions of the hydrosocial often limit social relations to water as structured by and fixed under a nature/society dualism—a dualism implicated in modern categorical and material abstraction, which often works to occlude water from the very idea of social relations (Schmidt 2014; Latour 1993; Linton 2010). Jamie Linton,

for example, writes, “The state of water always reflects, in one way or another, the state of society. And yet perhaps the greatest hydrological accomplishment in the modern world has been to construct an idea of water as something apart from the social contexts in which it occurs” (2010, xvii-xviii). For Linton and others, the history of what has been called “modern water”—that is dominant Western conceptions of water stemming from the scientific revolution, the discovery of the elemental composition of water (H<sub>2</sub>O), and the “natural” scientific ways of relating to and knowing about water, along with the commodification of water as a sources of energy and later as a consumer project, that took hold on a large scale in Europe and North America throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries, and globally in the latter half of the 20<sup>th</sup> century—is a history of modern abstraction (Bakker 2010; Linton 2012).

Geographer Erik Swyngedouw describes how modern Western epistemology is premised on this separation between nature and society as a means of producing objective knowledge; however, “once it became hegemonic ... [i]t turned from a dominant epistemology to a dominant ontology,” solidifying the “strong belief that the world was actually ontologically split into things natural and things social” (2004, 14). Indeed, it has been argued that the very rise of modernity is intimately connected to water and its abstraction: from the role of water as a resource, to the rise of water-intensive personal hygiene routines, and in its use as public utility, as a marker of the rise of industrialized civilization (Linton 2010; Gandy 2004; Bakker 2012). “The bourgeois residents of the 19<sup>th</sup>-century European cities, for example,” notes Bakker, “celebrated hygiene as a moral virtue. Medical researchers and social reformers allied to assert a link between clean material surroundings and moral rectitude” (2012, 617). David Gregory similarly

explains how toward the end of the 19<sup>th</sup> century “a new discourse of hydrology and hydraulic engineering emerged which translated ‘nature’ into mathematical formulae. In these there would be no place for ‘local’ knowledge, and the hydraulics of irrigation channels and the mechanics of dam construction could be made the same the world over” (qtd in Linton 2010, 14). Modern techniques of water management, along with the rise of taken for granted dominant systems of scientific knowledge have shaped Western social relations to and ontologies around water as ahistorical and seemingly without cultural or place-specific content. Within this hydrosocial purview, water is often taken for granted as an abstract and limitless commodity, or else as a banal aspect of our lives in which we have not had to think much about. Further, the dominance of Western social relations to water has shaped water’s use, flow, and treatment within a specific and limited hydrosocial reality that makes little room for the possibility of other hydrosocial relations, or as Barnes and Alaout state, this limited purview fails to consider the potential of multiple water ontologies (2012).

More specifically, in the Canadian context, settler-Canadians’ relationships with water are oft-idealized and ridden with contradictions. As Bakker notes, “We are fiercely protective of our water, yet hugely wasteful with it, using more water per capita than any nation in the world, except the United States” (1). Bakker continues, “Canadians are highly resistant to the notion of exporting water, yet Canada is one of the largest diverters of water in the world for hydropower” (1). Further, Canada is one of few developed countries in the world to not have legally enforceable water quality standards (1). These contradictions stem from Canadians’ mistaken belief that we have an unlimited abundance of water, and the assumption that water can be diverted without regard for

environment. Numerous case studies further suggest that water management across Canada is at best marked by complete federal-provincial mismanagement, and at worst, the product of ongoing and explicit state-mandated logics of possession and commodification (see Phare 2009). Further still, in the wake of mismanaged, poorly maintained, or outright neglected water systems, there has been a steady increase in the privatization of Canadian water supplies. Where much of Canada's water remains publicly owned, or a combination of public and private,<sup>28</sup> the past several decades has seen an uptake in deregulation, and a move to privatization between international trade agreements and the outsourcing of municipal water management and ownership, further abstracting settler subjects from the waters they consume. The Comprehensive Economic and Trade Agreement (CETA), for example, has been viewed by many as a move to open up the international commercialization of Canadian waters,<sup>29</sup> while the recently amended and newly named Navigation Protection Act (2012) has legislated a vast reduction in the number of Canadian lakes and rivers protected under Federal navigation infrastructure policy.<sup>30</sup> Controversy over private bottled water companies outbidding communities for

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<sup>28</sup> See for example *Program on Water Governance Fact Sheet* on "Public/Private Water" in Canada. [http://watergovernance.ca/wp-content/uploads/2010/04/FS\\_Public\\_Private\\_Water.pdf](http://watergovernance.ca/wp-content/uploads/2010/04/FS_Public_Private_Water.pdf)

<sup>29</sup> The Council of Canadians has consistently warned against the privatization of water under CETA. See for example "Factsheet: Private Water and CETA" <http://canadians.org/content/factsheet-private-water-and-ceta>. While Article 1.9 of CETA states that "water in its natural state . . . is not a good or a product," the language has been criticized for the ambiguity of the meaning of "natural state." Further, the liberalization of trade will both challenge the sustainability of Canada's water management and agricultural industries, while potentially opening up Canadian water markets to giant transnational water corporations. For more information, see *Water Canada* <http://watercanada.net/2016/ceta-and-canadas-water-security/> and Maude Barlow's articles in the *Globe and Mail* <http://www.theglobeandmail.com/opinion/what-you-dont-know-about-a-deal-you-havent-heard-of/article566454/>.

<sup>30</sup> For more in depth information on the NPA, see chapter one of this dissertation.

permits to their water sources have further brought these issues to the fore in recent years.<sup>31</sup>

Settler-Canadian hydrosocial relations are thus primarily shaped under modernity's separation of nature from the social, the misconception of the nation's water abundance, and the increasing prevalence of the market as a means of maintaining infrastructure and supply in the wake of government mismanagement and de-funding. When enshrined under liberal environmental protections, as I will show in chapter one and two, settler entitlement to the waters within this territory limits the potential of these protections within narrow and abstracting hydrosocial relations. As such, I contend that whether under the bifurcation, mismanagement, and neglect of public waters, their increasing privatization, or even liberal conceptions of its conservation and protection, settler colonial relationships to water can be understood to be predominantly fixed within the social relations of production which frame water under three interrelated dominant registers: water as propertization; water as utility; and water as a means of ensuring settler futurity.<sup>32</sup> Together, these three registers of water create and perpetuate the conditions under which the inherent rights of Indigenous peoples remain illegible; they

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<sup>31</sup> Nestlé has come under fire for continuing to extract water in Aberfoyle, Ontario during a drought in the summer of 2016, and for outbidding the municipality of Guelph, Ontario in its attempt to buy a well in the area.

See for example, <http://www.theglobeandmail.com/news/national/nestle-continues-to-extract-water-from-ontario-town-despite-severe-drought-activists/article31480345/> and <https://www.thestar.com/opinion/commentary/2016/10/12/nestl-controversy-a-fresh-water-wake-up-call.html>

<sup>32</sup> My language of “three registers” and the specific term “propertization” comes from the work Shiri Pasternak (2010). Pasternak explores the imposition of settler colonialism onto Indigenous governance practices through “three property registers” in order to examine a “set of social relations and political imperatives that capture a kind of practice of power” (10). Where Pasternak explores how land in the settler state is ultimately registered through its “propertization” with property largely registered in three ways, which include “property as sovereignty/jurisdiction”; “property as capitalist alienation”; and “property based on stewardship for future generations” (10), I suggest water can be understood through three related but distinct dominant registers in the settler state.

foster the conditions through which settler worlds are constructed and imposed on Indigenous lifeways, as they undercut Indigenous legal orders, and actively unmake the possibilities for Indigenous water worlds to flourish.

While these registers will be elaborated on in the chapters that follow, I offer a brief description of each here. Given the Canadian nation state's organization around a liberal order, the first of these registers extends liberalism's emphasis on private property in an attempt to fix the unwieldy terrain of water in a manner similar to property. In Canada, water rights vary across provinces and territories, but each approach centres on clarifying the entitlement of individuals to access or use of water that flows through or on their property.<sup>33</sup> The rights of entitlement are fundamentally anthropocentric, as they pertain to rights existing solely between persons, negating relationships between individuals and the land or waters they hold rights to. Burdon et al. expand on this, writing, "As a consequence, property is described not as a physical thing, like land or water but as an abstract concept that demarcates legal relations between persons"; they continue, "To be clear—the 'thing' that one owns when one owns property is not the thing but the right in relation to the thing" (2015, 8). Through this process of rights-based entitlement, the land or water in question is displaced from its materiality and given meaning within the abstracted discourse of property rights—water in effect, becomes

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<sup>33</sup> Water rights across Canada consist of prior allocation rights (B.C., Alberta, Saskatchewan, Manitoba, and to some extent Nova Scotia), Public Authority Management (Yukon, Northwest Territories, and Nunavut), Riparian Rights (Ontario and most of Maritimes), and Civil Code Management (Quebec). Some interpretations of these rights, such as Public Authority Management in a territory such as Nunavut, for example, may allow for less individually-centred entitlement, but at their core, these rights serve individual entitlement to resources within a private property framework. Further, Aboriginal water rights are also to be protected under Section 35 of the constitution, and these rights could very well look more like the place-specific hydrosocial relations I discuss throughout this dissertation; however, these rights have limited influence under a Western property regime and are often subsumed under discursive frameworks of entitlement and commodification. For more information see the Program on Water Governance, University of British Columbia: <https://watergovernance.ca/resources/factsheets/>

propertized. As I will show in my discussion of early 19<sup>th</sup> century settler writers, the Navigation Protection Act, and the James Bay Hydroelectric Project in subsequent chapters, the attempted propertization of water across Turtle Island shapes Indigenous water worlds within the confines of settler colonialism, with even so-called environmental policies premised on notions of entitlement and the rights regimes of private property.

The second related dominant register that works to contain water within limiting social relations of production and the confines of Western property regimes apprehends water for its value as a utility. While mobilizing water's utilitarian power is of course not exclusive to Western or settler colonial social relations, the scale and consequences of registering water in this way under settler colonialism has had devastating effects for Indigenous peoples, and for the environment more generally. With water registered as utility, water, not unlike land, is treated as a resource commodity, valued in monetary terms as set out by the market. In these terms, the hydrosocial is only understood in relation to its exchange-value and potential short-term capital gains, with little attention given to either its place-specific context, or its sustainability as one of the most fundamental resources necessary for the maintenance of life. Bruce Braun has highlighted this discursive process as "the refiguring of nature in terms of "services" and "natural capital" (2013, 2). Further, this refiguring of nature within the discursive constraints of utility, and by extension, as a national resource commodity, presupposes that humans, as the owners of the commodity, are capable of controlling that which has been deemed their property (Burdon et al. 2015, 9-10). Water is treated as if it were as constant and stable as the market permits, and humans are understood as the sole actors within

relationships that only concern transactions between persons. The register of water as a utility encapsulates how settler colonial hydrosocial relations have worlded the waterways of Turtle Island in material ways since the beginning of the nineteenth century; through the construction of mills and canals, and hydroelectric dams, water has been registered as a utility in ways that consistently infringe upon Indigenous peoples' inherent rights. As the sites of analysis in my chapters illustrate, each of these utility forms—mills, canals, and dams—serve as the material manifestations of how the dominant settler colonial registers of waters world Indigenous waterways under the destructive structures of settler colonialism.

The third register of water I aim to examine in relation to settler colonial hydrosocial relations is how water is registered as means of ensuring settler futurity. This register is much more difficult to define than the previous two, but represents the cumulative effects of registering water as an extension of property and through its utility value. This is to say, this third register of water is tied to how water is managed and mobilized toward the regeneration of the settler state and the settler subject; this register also captures a contradiction of settler colonial hydrosocial relations. Even as water may be mismanaged or severed from its natural materiality under settler colonialism, it remains a celebrated natural element in many respects. It has been championed as creating the very conditions for Canadian settlement and resurgent nationalism—as I will explore through the writing of J.W.D Moodie in chapter one, and the Quebecois' mobilization of the James Bay Hydroelectric Project in chapter three—and has also served as a locus for liberal forms of environmentalism, as I will show through M.T. Kelly's ironic novel, *A Dream Like Mine*, and the Navigation Protection Act. Drawing on

theories of settler colonialism, and in particular Lorenzo Veracini's notion of "narrative transfer," which mobilizes several nationalist narrative strategies to locate Indigenous peoples and their worldviews as always in the past, while simultaneously "indigenizing" settlers, and even positioning the settler nation state as "post-colonial" while lamenting the effects that colonization has had on Indigenous peoples, I will examine how water becomes incorporated into transferist narratives that situate it as a means of asserting settler futurity on Indigenous lands, and often at the expense of Indigenous futurities (2010, 41-43).

### *Indigenous Hydrosocial Relations*

While this dissertation explores the possibilities for the remaking of Indigenous water worlds, it is largely a project concerned with settler colonialism and its ongoing imposition on Indigenous lifeways, legal orders, and assertions of inherent rights. This is to say that I do not aim to define Indigenous hydrosocial relations, and the ways that they have or could world the waterways of Turtle Island in the same way that I offer a generalized interpretation of settler colonial social relations to water above. This is, on the one hand, due to my subject position as a settler scholar, and one without the community embeddedness and engagement required to articulate a vision of a given Indigenous water world; on the other hand, while Indigenous hydrosocial relations have been articulated in many clear and powerful ways, I do not intend to attribute to them a singular, overarching, or dominating structure in a way similar to that which helps us understand processes of settler colonialism, which, while diverse in its own ways, has its roots in Western, European traditions that extend to overarching state and legal structures.

Indigenous hydrosocial relations have different histories and contexts. While Indigenous ontologies around water may be clear and consistent in some communities, others are still doing the work of reclaiming and articulating these ontologies amidst the backdrop of colonization.

With this in mind, I offer interpretations and articulations of Indigenous hydrosocial relations and the water worlds they construct in a manner that is, at times, deliberately generalized, although not intended to be totalizing, and in other instances, in relation to the place, community, or nation specific context through which they emerge. This generalized approach is a rhetorical move enacted by many Indigenous thinkers and harkens to Spivak's notion of "strategic essentialism," wherein marginalized peoples act "on the basis of a shared identity in the public arena in the interests of unity" (Oxford Reference). Such unified articulations of Indigeneity can be seen in moments of collective struggle, such as during the Idle No More Movement, or the collective struggles over water that culminated in support of the Standing Rock Sioux in North Dakota, wherein the refrain "water is sacred," became a kind of mantra for Indigenous water rights across Turtle Island. While this generalized and strategic articulation of shared tenets around Indigenous hydrosocial relations is useful in countering the dominant social relations to water fostered through settler colonialism, Indigenous community and nation-specific contexts are important when discussing particular struggles over rights and the particular Indigenous nation's laws that give voice to these struggles. As such, through both generalized and nation-specific articulations of Indigenous hydrosocial relations, I aim to gesture to concepts of Indigenous water worlds that are at once conceptual counters to the worlding projects of settler colonialism, and

also concrete material interventions into specific instances of settler colonial encroachment onto Indigenous waterways and ways of life.

Indeed, my work builds on an exceptionally long history of Indigenous relationships to, representations of, and political actions to defend water. Within this long historical context, many Indigenous scholars, community members, and political movements articulate common conceptions of the significance of water as that which is fundamentally intertwined with community, culture, health, and politics. Burdon et al. describe these common Indigenous “patterns of conceptualizing and relating to water” as follows: “the general importance [Indigenous peoples] assign to water; the significance of flows and continuities in Indigenous cosmologies; the related role of water in expressing sociality and territoriality; water as implicated in wider Indigenous conceptions of temporal and spatial responsibility; and ongoing issues of resource rights and access” (2015, 336). Indigenous conceptions of water tend to preclude the possibility of a nature/culture binary as communities and the waters within them are articulated as co-constituting and interdependent. The Maori, for example, may view rivers as *tupuna*, meaning ancestors, and invoke a river’s name as an assertion of their identity (Morris and Ruru 49). As emphasized in the *Te Ika Whenua Rivers Report*, “the people belong to the rivers and the rivers belong to them” (16), the river “is the people themselves” (13). Similarly, Bédard discusses the significance of water for Nishnaabeg peoples, drawing on her experiences of living along the French River. A member of the Dokis First Nation in northern Ontario, Bédard suggests that the Dokis, together with fellow “Nishnaabeg communities formed a tight network of families, political alliances, and shared common cultural similarities defined by living on the water’s edge” (91). Bédard writes, “The

waters of the French River . . . represent an intimate and critical aspect of my identity as an Nishnaabe-kwe” (91). Similarly, for the Haudenosaunee, relationships to water are structured around “giving thanks” and understood in terms of “*responsibilities*, not in terms of water rights” (King 2007, 452). Joyce Technawiiaks King emphasizes the sacred place given to water in Haudenosaunee culture, writing, “Our society treats and cares for the waters as a sacred element” (452). Ardeth Walkem situates the relations between Indigenous peoples and water more generally, stating, “Indigenous cultures are closely tied to the lands and waters, and when waters are endangered, the very identity and survival of indigenous peoples is endangered” (2011, 304). Taken together, these conceptions gesture to a level of relationality not often accounted for in settler colonial hydrosocial relations, and mark a significant departure from the fixed and separated relations that tend to structure settler colonial engagements with and relationships to water.

Cultural connections to water here are not to be read apolitically, however. Emphasizing Indigenous conceptions of water and environment as an alternative or opposite to dominant Western views risks reproducing what Wolfe has called “repressive authenticity” (1999). Put another way, to idealize key components of Indigenous environmental relations in the midst of unsustainable land and water rights policies, and especially in this moment of shared ecological concern, risks constructions of the “Ecological Indian” (Krech 2000). As Turner and Neale have noted, “the ethical problem this figure poses is a merely apparent sensitivity to indigenous ‘values’ and knowledges, brought on by our shared (global) endangerment.” “As such,” they continue, “the density of colonial history, sociocultural context and the present situation of indigenous peoples

are replaced by the ‘the environment’, which forecloses the concerns with, and the concerns of, its longer standing inhabitants” (2015, 390). Thus, Indigenous hydrosocial relations must be understood as a *political* ecology—that is as always having political stakes in relation to the significance of water and environment as they relate to Indigenous peoples.

Further, a survey of literature on Indigenous peoples and water identifies *water governance* as a key issue of Indigenous hydrosocial relations (Baird & Plummer 2013; Castleden et al. 2017; Cave & Plummer 2013; Clogg et al. 2016; Cosens, & Chaffin 2016; Yazzie and Baldy 2018)). This means that Indigenous approaches to water are not to be understood simply as expressions of culture, or ecological ideals, but rather as assertions of the sovereign right to govern the waters in their territories based on their traditional, customary, and continuously evolving practices and laws. Further still, since water is seen as implicated in a dense network of interdependencies, to govern water could therefore be understood as the governance of Indigenous nationhood in its entirety.

Section 9 of the Indigenous Peoples’ Kyoto Water Declaration states:

We Indigenous Peoples have the right to self-determination. By virtue of that right we have the right to freely exercise full authority and control of our natural resources including water. We also refer to our right of permanent sovereignty over our natural resources, including water. (UNESCO 2003)

While Indigenous cultural perspectives of water cannot be separated from political objectives around water governance (this is indeed precisely the point), my aim in exploring Indigenous conceptions of water through this dissertation is not to offer a kind of ethnographic alternative to Western approaches to the hydrosocial; rather, I look to Indigenous hydrosocial relations as means to offer a *political* and ontological alternative to the dominant Western colonial approaches to water management and governance. Put

another way, the goal is not to conceive of a co-governance model, or the potential for ontological plurality under the confines of settler colonialism, but to consider the requirements for a shift in legal and jurisdictional powers so that the conditions for Indigenous water governance can be realized.

### *Water and the Problem Space of Ontology*

Much of my work in this dissertation is to analyze and critique the limited legal and ontological perspectives proffered by settler colonialism and its liberal rights regime, as well as to examine how Indigenous water ontologies put pressure on, rupture, and reveal the limits of settler colonial hydrosocial relations. These competing conceptualizations of and relationships to water are often oppositional, with the expression of Indigenous water ontologies overdetermined by the possessive logics of settler colonialism and under the jurisdictional powers of the settler state; however, I am also interested in how settler and Indigenous hydrosocial relations exist in inextricable relation with one another, enmeshed through their relation to the shared waters that flow through and between them. As such, part of my task in the latter portion of this dissertation is to ask what it means to consider these oft-competing ontologies relationally, not just as differently positioned ontological assertions, but as those which are undeniably constituted, as least in part, through their relation to the other. Where Indigenous peoples are all too aware of the ways by which their relationships to water are subject to the delimiting powers of settler colonial hydrosocial relations, I examine what it could mean for settler colonial water ontologies to truly reckon with the imposition of their relationality to Indigenous water worlds. While the limitations of this relationality is examined in chapters one and two, and to a

large extent, chapter three, I conclude by gesturing to the possible ways of what this relation might look like for the decolonization of water politics in Canada. In other words, if settler and Indigenous water worlds are necessarily constituted relationally by the waters that flow between them, how then do we create the conditions wherein Indigenous water ontologies and water law are taken seriously in a way that would create the conditions for the remaking of Indigenous water worlds in a settler state that has and continues to delimit their possibility?

In responding to this question, I draw on Mario Blaser's concept of "political ontology." Blaser writes, "political ontology cannot be concerned with a supposedly external and independent reality (to be uncovered or depicted accurately); rather, it must concern itself with reality-making, including its own participation in reality-making. And this, of course, cannot be conceived as an autonomous move from how we engage the ways in which others make realities" (2014, 55). While a large part of this dissertation serves as an attempt to explore reality-making, or worlding, in relation to water, I build toward exploring the potential and limits of thinking worlds in relation to one another, especially when those worlds are always already co-constituted by the waters that necessarily flow between them—and even as those waters are registered in starkly different ways. Mobilizing the idea of political ontology is a means not of solving this problem, but of better understanding it. As Blaser notes of political ontology, "the term is meant to simultaneously imply a certain political sensibility, a problem space, and a modality of analysis or critique" (55); he continues, "The political sensibility can be described as a commitment to the pluriverse – the partially connected unfolding of worlds – in the face of the impoverishment implied by universalism and potentially by the

project of a common world” (55). Blaser is careful to highlight that these worlds “are not sealed off from each other, with clear boundaries”; they are indeed connected, and “yet there is no overarching principle that can be deduced from these connections and that would make this multiplicity a universe” (55).

Political ontology is a radically different way of conceptualizing politics than liberalism, which has had a major impact in the structuring of settler water worlds and constrained or devastated Indigenous ones in the attempt to bring Indigenous cultural expressions into the fold of Western liberalism. Where the discursive and institutional practices of liberalism have resulted in a “cacophony of moral claims,” to draw from Jodi Byrd—claims “that help to deflect progressive and transformative activism from dismantling the conditions of colonialism” (xvii)—political ontology offers a modality through which to understand how these claims must be constituted differently, not in relation to a dominant centre, but in ways that “decenter the vertical interactions of colonizer and colonized and recenters the horizontal struggles among peoples with competing claims to historical oppressions” (xxxiv). Engaging settler and Indigenous relations through the problem space of political ontology radically challenges the “colonial and postcolonial subjective, institutional, and discursive identifications, dispersions, and elaborations of the enlightenment idea that society should be organized on the basis of mutual understanding” (Povinelli 2002, 6). In short, engaging with the relationship between settler and Indigenous water worlds through the problem space of political ontology is a means of revealing the tensions between water ontologies rather than attempting to reconcile them.

Indigeneity is of particular importance within conceptions of political ontology

because Indigenous presence ruptures the ontological supremacy of settler colonialism on Turtle Island. In relation to implications of conducting environmental assessment in Canada's north, Blaser elaborates, "Indigeneity troubles the project of a 'common world' by querying what due process means. What procedures are deemed acceptable to rule in or to rule out the kind of entities that make up the collective? Indigeneity troubles this precisely because it signals that collectives (or assemblages, or, to use my term, ways of worlding) do not get constituted in a vacuum but rather in relation with each other" (55). Indigeneity, then, demarcates both the radical difference between ways of worlding the lands and water of what is now Canada, as well as the necessity of a politics that reckons with the unquestionable relationality of these often-competing worlds. Where settler colonial hydrosocial relations have sought to foreclose upon the political space of Indigenous water ontologies, I conclude my dissertation by considering what it could mean for the settler state to truly reckon with the significance of this relationship in ways that might decolonize hydrosocial relations in the settler state more generally.

My interest in a multi-ontology approach to water follows from the important work of Julian S. Yates, Leila M. Harris, and Nicole J. Wilson, who ask, "what the implications would be to take seriously the possibility and politics of a multiplicity of water-related worlds, highlighting multiple water realities and ways of being-with-water, not just different perceptions of or knowledge systems tied to water's (singular) material existence" (798). Yates, Harris, and Wilson build upon an "assemblage approach" to water governance, in order to explore the potential to take seriously Indigenous water governance structures. I am similarly interested here in investigating the "political spaces where water ontologies meet" (799), and in particular, considering how water itself

serves as a political space that necessitates the meeting of different and often competing ontologies. However, I would like to extend Yates, Harris, and Wilson's concern for Indigenous water governance decisively to the realm of Indigenous law. As my sites of analysis will show, Western ontological approaches to water governance tend to predetermine how these ontologies will meet or be mediated within a given political and legal space: through the destruction of Indigenous ways of life, the pollution of ecosystems, or the forced terms of negotiation for the maintenance of any semblance of Indigenous rights. In other words, just as liberal politics makes space for different ontological perspectives without ever challenging the power structures that relegate those ontologies to simplified expressions of culture, water governance that merely "makes room" for Indigenous ontologies will be limited in its ability to remake Indigenous water worlds. Yates, Harris, and Wilson are careful to note that "scholars have drawn attention to the ongoing effects of the imposition of English common law doctrine and its political-legal legacies in relation to water, particularly for First Nations" (802). Further, in Wilson's previous work, drawn on above, she explores a "hydrosocial multiplicity, which stresses a re-politicization and reaffirmation of Indigenous laws, customs and knowledge in relation to water" (Wilson, 2014). It is this reaffirmation of Indigenous laws, customs and knowledge around water where I want to locate my consideration of a multiple ontologies approach to decolonizing water. Indeed, while an expanded ontological paradigm, and the consideration of relational ontologies brings us toward the remaking of Indigenous water worlds in the settler state, it is the assertion of and adherence to Indigenous water law that will result in the material conditions required for the remaking of Indigenous water worlds.

## Chapter Breakdown

Each of my chapters takes a site of water conflict as its point of analysis or departure. In some instances, these conflicts become part of my sites of analysis; in others, they set the historical or contemporary context that lead me into the textual representation and issues discussed throughout the chapter. Each of my three chapters, and my concluding chapter implicitly or explicitly foreground a conflict prompted by the imposition of a large-scale utility-form that registers water through settler colonial hydrosocial relations: canals, mills, and dams. While I do not intend to uncritically re-center the prominence of settler colonial registers of water, these utility-forms are important for understanding the material water worlds created through settler colonial relations to water, and the stakes of Indigenous water rights in settler Canada. While my first two chapters examine the historical roots of settler colonial water worlds as well as their contemporary manifestations—the dominant liberal and late liberal orders and their property regimes, governance structures, and distinct settler subjective enactments that have led to their establishment and perpetuation—chapters three and my concluding chapter explore the necessity of Indigenous legal orders and water ontologies in responding to settler colonial water worlds and their continued encroachment on Turtle Island.

Chapter one begins with a brief discussion of what has come to be known as “Canada’s wild rice wars” along the Trent-Severn Waterway, an important canal system constructed in the 19<sup>th</sup> century, and which includes one of the largest lift lock systems in the world (Jackson 2015). I follow the history of the wild rice conflict to over one

hundred and fifty years prior to its implicit and explicit manifestations in the settler life writing of Catharine Parr Traill and J.W.D Moodie. I read these early, prominent settler writers for their articulations and establishment of the liberal order framework, what we can learn from their assumptions, and the settler logics of possession that they support. Specifically, I am interested in how this liberal order expands first, into the ordering of newly settled lands and waters, later, into what is often referred to as Canada's first piece of environmental legislation, the Navigation Protection Act, and eventually into ongoing contemporary disputes such as the wild rice wars. I examine how settler life writing participates in this ordering of space, and also how discursive structures organize early settler relationships and subjective identifications to the waters that they settled along. Tracing settler colonialism as liberal ordering through settler life-writing, public policy, and a contemporary rights dispute allows me to understand how settler relationships to water exist on a continuum premised on registering water as property and as utility in ways that actively dispossess Indigenous peoples of their lands, waters, and ways of life. My analysis in chapter one illustrates how from the earliest moments of settlement, water was registered through distinct processes of settler colonialism that worked to frame Indigenous lifeways as illegible, while ensuring the conditions for settler futurity on and within Indigenous lands and waters.

Chapter two extends my examination of settler liberalism to its more insidious forms in the context of 20<sup>th</sup> century environmentalism, under the conditions of what Povinelli calls late-liberalism. I begin this chapter with a brief discussion of the Grassy Narrows (Asubpeeschoseewagong) and White Dog (Wabaseemoong Independent Nation) First Nation communities in north-western Ontario, both of which suffered the effects of

mercury poisoning when the Dryden Chemical Ltd. Paper mill dumped ten tonnes of mercury into the English-Wabigoon River system between 1962 and 1970. While the ongoing effects of this event persist in the background of this chapter, my discussion is focused on M.T. Kelly's 1987 novel *A Dream Like Mine*, and its ironic critique of settler liberalism and seemingly progressive environmentalism. Through the perspective of a flawed white settler narrator, *A Dream Like Mine* tells the story of a fictionalized First Nation community experiencing the effects of mercury poisoning in its river system. Ironic representation of a settler narrator who romanticizes and then coopts Indigenous resistance toward his own settler futurity serves as a useful means to offer further insight into how liberal forms of recognition and their subjectifications continue to undercut Indigenous water rights and manage or circumscribe Indigenous resistance.

As a whole, this ironic move offers further insight into the complex forms of liberalism that continue to render Indigenous rights illegible. In focusing on a novel that ironically stages settler subjectivity at a later moment, the linkages between the first person 'I' in the life-writing of Moodie and Traill and the first-person narration in Kelly's novel, illustrate that much of the maintenance and extension of a liberal order depends upon the construction of settler subjectivity. Further, if the liberal order proffered by early writers such as Moodie and Traill is obvious in the logics of possession they support, Kelly's ironic narrative, and the ongoing issues facing First Nations communities along the English-Wabigoon River, illustrate both the limitations and power of late liberal recognition-based politics that continue to pollute Indigenous waterways and undercut the potential for Indigenous water ontologies and the legal orders that support them to proliferate.

My third chapter takes Canada's obsession with mega dams, and in particular the construction of the James Bay Hydroelectric Project and its impacts on the James Bay Cree as its point of departure. While much has been written on the James Bay Project, as well as the James Bay Cree's staunch resistance to its encroachment onto their territories and ways of life, this chapter is primarily interested in the potential and limitations of the seemingly inevitable relationship between Indigenous and settler colonial water worlds. I begin by examining the signing of the James Bay and Northern Quebec Agreement, and its relation to the formation of the coalition of the Grand Council of the Crees. In particular, I examine the epic depiction of the Grand Council's formation in the 2011 community-produced documentary *Together We Stand Firm*, in order to understand the important political work of the Grand Council, and also their formation under the circumscription of the settler state. The James Bay and Northern Quebec Agreement stands as Canada's first comprehensive land claim agreement, and its signing by the Grand Council of the Crees, who formed to negotiate on behalf of the James Bay Cree, raises important questions about the constraints of Indigenous nationhood enforced through Canada's worlding of Indigenous waterways, and the right's legibility this enforcement presumes and prescribes—how alternative notions of Indigenous nationhood and the hydrosocial are effectively rendered illegible through settler encroachment and forced rights negotiations.

While the Grand Council secured hard won financial security and some jurisdictional powers for the James Bay Cree, and were successful in staving off the second phase of the dam's development, I draw on community-based and community-oriented literature to probe exactly what may have been given up or gained in relation to

the Cree's ability to remake a distinctly Indigenous water world in the wake of a project on the scale of the James hydro-electric dam. I tread carefully in my critique here, especially given the limited options many Indigenous communities face in opposing massive energy development projects in their territories; rather, I rely heavily on Indigenous theories of what is known as "place-thought," as well as Chickasaw author Linda Hogan's fictionalization of resistance to the James Bay Project in her novel *Solar Storms*, in order to explore what the re-making of Indigenous water worlds might look like if not constrained by their legibility to the settler state, and the state's limited terms of negotiation. Taken together, this chapter aims to consider how Indigenous water worlds might be remade inside and outside of state engagement, through Indigenous forms of kinship and the integral role that Indigenous women play as water protectors, as I probe the problem space of ontology in a settler colonial nation state.

My concluding chapter draws together the tensions addressed through the previous chapters in order to explore some of the decolonial conditions required for the re-making of Indigenous water worlds in relation to the settler state. I turn to the Grand River, a river that cuts between the Six Nations of the Grand River Haudenosaunee territory and what are predominantly settler communities in southern Ontario. The Grand River represents a culmination of settler colonial registers of water in ways that cannot be disentangled from the Indigenous peoples who share this common water source. The history of Grand River territory is one of settler encroachment and Indigenous dispossession, of dam and canal building, and the ongoing negation of Indigenous rights. Despite this, the Haudenosaunee have maintained distinct approaches to land and water tenure articulated through their overarching legal structure, the Great Law of Peace and

Turtle Island's earliest treaty, the Two Row Wampum. As I explore the historical and contemporary contexts of the Grand River and the significance of these Haudenosaunee legal orders, I draw on Mohawk artist Alan Michelson's video art installation, *Two Row II*, in order to consider what the decolonial mediation of competing hydrosocial relations in the region might look like. Ultimately, and building upon the work of my previous chapters, this chapter argues for the jurisdictional power of Indigenous legal orders and water ontologies as the way forward in reckoning with the legibility of the inherent rights of Indigenous peoples. While hydrosocial relations may be shared across the river, the effects of dominant settler colonial hydrosocial relations delimit the possibilities for the realization and continuance of Indigenous water ontologies; therefore, as I work toward the conclusion of this dissertation, this chapter considers what must be given up in order to mediate the relational problem space of ontology, and to meaningfully decolonize Indigenous water rights in the context of the settler state.

**Chapter 1: Making Settler Water Worlds: The Establishment of a Settler Liberal Order in Upper Canada/Ontario in the Writing of Catharine Parr Traill and J.W.D.**

**Moodie and the Legislative Measures of the Navigable Waters Protection Act**

But for the steam-engine, canals, and railroads, North America would have remained for ages a howling wilderness of endless forests, and instead of the busy hum of men, and the sound of the mill and steam-engine, we should have heard nothings but ‘The melancholy roar of unfrequented floods’ (J.W.D Moodie, “Canadian Sketches”)

“Anishinaabe manoomin inaakonigewin gosha” reads a billboard on the highway to Pigeon Lake, near Peterborough Ontario (Figure 1). The billboard, put up in August of 2016, is written in Anishinaabemowin, and translates to “wild rice is Anishinaabe law” (Carleton 2016). It was erected by the Ogimaa Mikana: Reclaiming/Renaming project, a collective that has been reclaiming street signs and historical plaques in and around Toronto since 2013. The billboard is an effort to draw attention to the importance of wild rice for Anishinaabeg people and also serves as a response to what has been referred to as “Canada’s wild rice war,” an ongoing battle between cottagers and Mississauga Anishinaabeg over the seeding and harvesting of wild rice (minomiin, manomin, or manoomin) on Pigeon Lake (Jackson 2016). In addition to these aims, the billboard emphasizes the centrality of Anishinaabe law by unsettling the legibility of its message as one which must be read outside of the settler framework and in the original language of Anishinaabe law. The inclusion of an image of a wild rice plant prompts engagement with the legibility of the billboard’s message, but also draws attention to the incommensurability between the settler legal orders that have permitted great harm to the watery plant, and the Anishinaabe law of which the plant is an integral part. I begin with

wild rice, and this ongoing conflict because as a plant species that depends on the health of the waters in which it grows, wild rice connects Indigenous and settler water worlds. It does so in interesting and paradoxical ways, because it is a species that aids human survival, Anishinaabe cultural and political practice, that suffers from settler infrastructure, and that also interferes with settler modes of property ownership and recreation. As Geri Blinick notes,

Manomin, also known as the “food that grows on water” or wild rice (*Zizania* sp.), is a traditional food of Anishinaabe people. The situation of manomin - as a wetland species, as an example of one of many traditional Indigenous foods that has been central to many Anishinaabeg as a nutritious staple food and as a sacred food . . . presents a fascinating case study through which Indigenous-settler relations can be examined, particularly in the context of jurisdictional disputes over “natural resources” or “Gifts from the Creator. (2012, 2)

Although it has been depleted in significant ways, its persistence and that of the Mississauga Anishinaabe in caring for it and ensuring its resurgence serves as a productive site for thinking about the remaking of Indigenous water worlds, the histories and jurisdictional powers that have worked against their existence, and the ongoing processes of settler colonialism that continue to hinder their proliferation.

Since 2007, a group of residents with cottages along the lake have been fighting with James Whetung, member of Curve Lake First Nation, over his seeding of wild rice in the waterway. Citing the decimation of the Anishinaabeg’s integral food source by government, onslaughts of settlers, and more recently, recreational cottagers, Whetung has seen as his mission, the returning of wild rice to the traditional territories of his people. He seeds Pigeon Lake with rice, harvests it for the community, as well as his own small company, and re-educates other Anishinaabeg people on how to grow, gather, process, and use the rice plants (Jackson 2016). The cottagers claim that the increase in

marshy plant is blocking their shorelines, disrupting their recreational activities in the lake, and undercutting the property values of their cottages. Whetung and other Anishinaabeg people from the area, including artist Susan Blight and writer and public intellectual, Leanne Simpson, assert that harvesting the rice, as well as creating the conditions for its proliferation is their right as Anishinaabeg, both as an inherent right of Indigenous peoples and as a specific treaty right under the Williams Treaty (Carleton 2016; Jackson 2016; Williams Treaty First Nation).<sup>34</sup>

The ongoing dispute has been framed in the dominant media, and by the cottagers themselves through their affiliated “Save Pigeon Lake” advocacy group, as a fight between “property owners” and “First Nations” and between “property rights” and “treaty rights” (see “Property Owners, First Nations” 2015; Sachgau 2015; Save Pigeon Lake). Pigeon Lake resident and one of the cottagers’ most vocal proponents, Larry Wood, has consistently voiced support for “traditional” and “noncommercial” harvesting of *existing* rice in Pigeon Lake. Wood has stated, “The Williams Treaty gave the First Nations the right to hunt, fish, and gather food for social and ceremonial purposes. We have absolutely no problem with that. Our issue is the deliberate seeding of the lake where rice never existed” (qtd. in Jackson 2016, n.p.). Where Wood and other cottagers are careful to maintain this statement of support for what they view as the traditional Aboriginal right of rice harvesting in all position statements and discussions with media,

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<sup>34</sup> For more information on the Williams Treaty see the website of the Williams Treaty First Nations (<http://www.williamstreatiesfirstnations.ca>). Of particular interest to my discussion here is the 2012 decision arrived at in *Alderville Indian Band et al v Her Majesty the Queen et al, Canada and Ontario*: “On October 29, 2012, in *Alderville Indian Band et al v. Her Majesty the Queen et al, Canada and Ontario* took the position at trial that harvesting rights associated with preconfederation treaties signed by the Williams Treaties First Nations were not intended to be surrendered in 1923, particularly the Treaty 20 (1818) area which was the subject of judicial scrutiny in *Taylor and Williams, 1981*.”

they claim that it is the ongoing seeding of the lake, as well as the use of modern harvesting technology, like the airboat that Whetung uses in his seeding and harvesting practice, that is effecting their property values and recreational activities. Despite, or perhaps because of this position, in 2015, local cottagers received permits from Parks Canada to clear the growing rice in squares of 100 feet by 100 feet per individual using mechanical combines. Curve Lake First Nation promptly declared that Parks Canada was in violation of its treaty rights and the matter remains before the conservation authority.<sup>35</sup> James Whetung continues to seed Pigeon Lake, harvest the rice, and rekindle an important cultural and governance practice almost lost to the settler ordering of the Anishinaabeg's waterways.

While Parks Canada and the Conservation Authority's management plan with respect to this issue remains to be seen, the collective efforts of cottagers, and the increasing support they have garnered from the surrounding Kawartha Lakes municipality and Selwyn Township, aim to delimit the meaning of the Anishinabeg's Indigenous rights. Their fight against the ongoing seeding of Pigeon Lake, opposition to the means by which it is done, and to what the rice is used for, constrains the inherent rights of Indigenous peoples within their ancestral waterways to that which is fixed in time, reducible to settler liberal conceptions of cultural inclusion and management, and

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<sup>35</sup> Conservation authorities produce watershed management plans and are typically responsible for issuing permits for local activities in their jurisdictions. The mandate of Ontario's conservation authority representative body is to "ensure the conservation, restoration and responsible management of Ontario's water, land and natural habitats through programs that balance human, environmental and economic needs." How this mandate relates to the inherit rights of Indigenous peoples, and their specific treaty rights under the Williams Treaty, and what jurisdictional powers they have as an arm of the municipal, provincial and federal governments remains to be seen in relation to the wild rice wars. The rights of Indigenous peoples are matters typically engaged at the federal level, but Canada has a long history of tying Indigenous rights issues up in jurisdictional bureaucracy between its legislative and administrative bodies. For more information on conservation authorities in Ontario, see <http://conservationontario.ca/about-us/conservation-ontario/>.

ultimately to that which is only legible within the context of settler colonial hydrosocial relations and the water worlds they have constructed.

The conception of Indigenous rights propagated by the cottagers is consistent in many ways with the “Integral to a Distinctive Culture Test” outlined in the Supreme Court of Canada’s Van der Peet decision, which states, that Indigenous rights under Section 35 of the Constitution Act extend only as far as those that “have continuity with the practices, customs and traditions that existed prior to contact” (R. v Van der Peet 1996). Like the official Indigenous rights policy of the Canadian state, the perspective of those seeking to uphold the value of their property rights along Pigeon Lake negate the active unmaking of Indigenous water worlds and lifeways that give meaning to this continuity and its realization from a distinctly Anishinaabeg worldview. Put another way, reducing the Indigenous right of harvesting rice only to the remaining rice beds in Pigeon Lake, and only for the limited conception of “ceremonial purposes,” ignores the fact that almost two centuries of settlement gradually reduced the proliferation of wild rice to almost nothing, undercutting the ceremonial, but also economic and governance capacity of the Anishinaabeg. To limit the legibility of Indigenous rights in this waterway, is to say, you have a right to what we left you, to what remains, and only to the extent that we have deemed these rights legible within the settler state; it is to say, you have no right to what you had, you have no right to your traditional governance structures, and ostensibly, no Indigenous rights to this waterway.

Indeed, the roots of this conflict must be traced back at least 200 years to the early settlement policies that shaped the waterways of the Mississauga Anishinaabeg in the image of settler colonialism. With fur trade and the lumber industry booming at the turn

of the 19<sup>th</sup> century, settlers sought more efficient trade routes between York (Toronto) and Lake Simcoe. Treaty 20 (1818) was the first pre-confederation treaty that surrendered Anishinaabe territories in the region, with the 1923 Williams Treaty encompassing much of the Anishinaabe lands already under government control and settler occupation. Notably, both of these treaties have been subject to judicial scrutiny on behalf of the Williams Treaty Anishinaabe First Nations, first in Taylor and Williams 1981, and later through *Alderville Indian Band et al v. Her Majesty the Queen et al.* (see Chippewas and Mississaugas Williams Treaty First Nations; Surtees 1986).

Despite these treaties not including the surrender of harvesting rights, nor the effects settler infrastructure might have on these rights, in 1833 the British government authorized the creation of a system of lockes, dams, and a canal, that would become the Trent-Severn Waterway (Angus 1988; Jackson 2016). Officially opening in 1907, the Trent-Severn Waterway caused the flooding and disappearance of 4,860 hectares of island reserve lands (Jackson 2016). While a 2012 settlement between the Curve Lake, Hiawatha, and Mississaugas of Scugog Island First Nations and the Canadian government resulted in a 71-million-dollar financial compensation for the flooded lands, the settlement did not address the effects of the flooding on the rice beds, which require shallow waters to grow. The settlement also did not address the loss of other vital food and cultural sources of the Anishinaabeg, devastated by the flooding (McCormick 2012; Jackson 2016); it certainly did not address the conditions required to remake this waterway in a way that would support the cultural and governance capacity of the Anishinaabeg.

Leanne Simpson addresses the effects of the construction of the Trent-Seven Waterway in her articulation of “Nishnaabeg re-creation” and “resurgence” in her text, *Dancing on Our Turtles Back*; she writes, “Before the waterway was built, colonizing the lifeblood of our system of rivers and lakes, many migratory species of fish travelled in and out of our territory in the spring and fall” (2011, 87). Focusing on the damage that the Trent-Severn caused to the Anishinaabeg’s resident populations of salmon and eels in particular, Simpson fleshes out the vital connections between the complex ecosystem affected by the waterway’s construction and Anishinaabe governance structures: “There is a convergence between the complex ways Nishnaabeg and salmon organize themselves, govern themselves, and mobilize; and that convergence is based on an intimate and inherent relationship within a localized ecological context” (88). Of the eels, she writes, “They were a tremendous source of protein; and in that sense were the base of the economy and the base of the nation. Their sheer numbers and ability to travel, adapt and celebrate the flux of the ecological context, the diversity of life and power of mass mobilization, impressed and informed Nishnaabeg thinkers” (88). The construction of the canal, dams, and locks materially severed these integral relationships, preventing the migration of salmon and the movement of eels into the waterways of Pigeon Lake, as the “ecological contexts” that helped structure Anishinaabe modes of governance and nationhood were undercut for the proliferation of settlement in the territory. Where the maintenance of Anishinaabe nationhood is premised on the material world constructed through an integral ecological relationality between the Anishinaabeg and non-human inhabitants that share their waterways, the primacy of settler hydrosocial relations—those registered through private property, water’s utility value, and as a means for the

establishment and regeneration of settler presence—construct a world that actively disavows Anishinaabe worldviews and ways of life.<sup>36</sup>

Returning to the “wild rice war” and the central importance of manoomin to the Anishinaabeg, in an interview with Sean Carleton, Susan Blight similarly states, “Our relationship to manoomin is over 15,000 years old; . . . Manoomin was central to how we came to be here. And for thousands of years, the Anishinaabeg have honoured that relationship” (Carleton 2016, n.p.); explaining the connection between the rice and Anishinaabe governance, she continues, “Beyond that, manoomin is connected to Anishinaabeg notions of governance and by that, I mean governing our communities and governing ourselves and how we go about our lives on this earth as Anishinaabeg.” Blight explains how, “There are teachings within manoominike (the harvesting of manoomin) that are central philosophical and spiritual tenets of the Anishinaabeg; teachings about respect, reciprocity, working for others, humility, gentleness, responsibility, balance, about relationships, and giving more than you take” (Carleton 2016). Here, Blight echoes the sentiments of the billboard she helped to erect as a member of the Ogimaa Mikana project—that “Anishinaabe manoomin inaakonigewin gosha,” that wild rice is Anishinaabe law. She asserts that Anishinaabe peoples are “shown how we should be through our land-based practices including manoominike.”

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<sup>36</sup> While this chapter only touches on the specificity of Anishinaabe relations to their waters, focusing instead on the settler colonial structures that undercut Anishinaabe water worlds, a great deal of work has been written on Anishinaabe worldviews and relations to their territories by Anishinaabe theorists and authors themselves. See for example the work of Basil Johnston, Gerald Vizenor, Louise Erdrich, Kateri Akiwenzie-Damm, Drew Hayden Taylor, John Borrows, and Leanne Simpson, as well the 2013 collection edited by Jill Doerfler, Niigaanwewidam James Sinclair, and Heidi Kiiwetinepinesiik Stark, entitled *Centering Anishinaabeg Studies: Understanding the World through Stories*.

Together, Simpson and Blight articulate an integral relationality between the Anishinaabeg, the waterways they inhabit, and the meaning of Anishinaabe law and governance. In this sense, there is no harvesting of manoomin by Anishinaabe peoples that is not at once economic, governmental, and ceremonial, as the harvesting of the wild rice represents and enacts Anishinaabe law in their traditional waterways. Where the ecological contexts that support the Anishinaabe nation and their legal orders have been dramatically reduced through over a century of settlement, the resurgence of manoominike offers a concrete act toward the remaking of Anishinaabe world worlds in the region—toward the material reconstruction of the relationships that inform and sustain Anishinaabe nationhood. As Blight states, “We hold up the jurisdiction of the Misi Zaaging Anishinaabeg and we honor their right to be Anishinaabeg on their own terms on the land” (Carleton 2016).

I begin this chapter with this brief exploration of the complex and ongoing dispute between the Anishinaabeg and an outspoken group of property owners at Pigeon Lake because it captures the problem space of ontology that will appear throughout this dissertation and which, I assert, is at the heart of Indigenous rights in Canada. The gulf between the Anishinaabeg’s inherent right to harvest rice, the inherent right to practice not only their culture, but the relationships that uphold Anishinaabe law and governance, and the primacy of settlers’ rights to private property, and ultimately of state jurisdiction over Anishinaabe lands and waters, is vast and often insurmountable. Even in the moment of its active remaking, the logics of an Indigenous water world are incongruent with and antagonistic to the private property rights that structure and organize settler relations to the waterway. This gulf, what I will explore as the problem space where

ontologies meet, conflict, or actively oppose one another, is the space that must be reckoned with in order to decolonize Indigenous rights in the settler state, as settler Canadians learn that this space is not inscribed, singularly, by settler law, but also by the Indigenous laws that have proceeded it. It is the space where Indigenous legal orders put pressure on state jurisdictional sovereignty, and where the inherent rights of Indigenous peoples might be heard outside of the constraints of the settler state. And of course the grounds on which these ontologies meet are not equal or even. The state actively renders the worldviews that give voice to the inherent rights of Indigenous people as illegible within state rights discourse and the material worlds this discourse constructs and upholds. This illegibility is further enacted by the settler logics of possession that persist into contemporary conflicts between property holding cottagers and the Indigenous peoples with inherent rights to the territory. The billboard erected by Ogimaa Mikana ensures that this illegibility is brought to the fore, not as something that can be glossed or erased, but as an illegibility that must be reckoned with in this shared territory.

The conflict at Pigeon Lake, and throughout the various waterways I explore over the course of this dissertation, are productive sites of analysis in that water renders the problem space of ontology visible. Its fluidity and flow ensures that this problem space is not foreclosed upon. As the wild rice seeds wash into the manufactured beach shorelines of settler cottages, the certainty of private property rights are upended (see Mackey 2016). Water, then, carries both the material ordering practices of settler hydrosocial relations through its propertization and settler regulation, and the ecological contexts that have informed Anishinaabe law and governance through the resurgence of harvesting practices that have sustained Anishinaabe life and culture within these waters. While

these ecological contexts, along with the waters through which they travel, may be shaped, constrained, or degraded through settler colonial registers of water, water's flow ensures that the space between these worlds remains open and full of potential and that these spaces are always connected through water's ambivalent fluidity.

Before arriving at this problem space, however, it is necessary to understand how the logics of settler colonialism have rooted themselves so firmly into these waterways—how it is that the rights of cottagers are given so much force alongside the inherent rights of Indigenous peoples; how Indigenous waterways have been unmade and remade so decisively in the image of settler colonialism; and how Indigenous lifeways and worldviews persist despite the material and discursive power of settler colonial hydrosocial relations. The majority of this chapter then, is dedicated to understanding a particular history of a settler liberal order and the logics of possession that are established in Upper Canada, and later Ontario, throughout the 19<sup>th</sup> century, and how these possessive liberal logics flow through the waterways of the burgeoning nation, unmaking Indigenous water worlds, and defining the legibility of Indigenous rights into our contemporary moment.

### **The Establishment of a Liberal Order in the Waterways of Upper Canada**

While others have done so by way of land, water is an effective lens through which I am able to trace the establishment of the settler logics of possession and liberal orders that structure how we understand state interpretations of Indigenous rights in our contemporary moment. Follow the Trent-Severn Waterway west to the Otonabee River,

and south into the Bay of Quinte, near Bellville, and over one hundred years back in time, and the logics of possession and liberal orders that make a dispute such as the rice wars possible become more apparent. Indeed, I do not begin this chapter along the Trent-Severn Waterway by chance. As James T. Angus suggests, “In some respects the history of the Trent-Severn Waterway resembles the history of Canada. One parallels the other. The same political and economic tensions that have constantly beset the country can be identified in the canal’s story” (1988, xi). While I am not concerned with the history of the Trent-Severn Waterway in and of itself, I am interested in the flow of water through the surrounding lakes, rivers, and tributaries, which make up an integral locus for the establishment and extension of settler colonial hydrosocial relations and the liberal orders which undergird them. From the St. Lawrence River to Lake Ontario, the Bay of Quinte into the Trent-Severn Waterway, through the rivers of the Anishinaabeg, into the traditional territory of the Haudenosaunee and Huron-Wendat peoples at Lake Simcoe to Georgian Bay and out to Lake Huron, these lakes and rivers carry with them centuries of settler colonial incursion onto Indigenous lands.

Following McKay’s liberal order framework, I am predominantly interested in the kinds of possessive logics and material ordering practices of settler colonialism that take root throughout the 19<sup>th</sup> and early 20<sup>th</sup> century in the heart of the of the British settler colony that was Upper Canada, and how these logics and practices massively remade Indigenous water worlds in the image of settler colonialism during this period. Further, I am interested in how the establishment of a settler liberal order during the 19<sup>th</sup> and 20<sup>th</sup> centuries, in conjunction with its more contemporary late liberal manifestations, delimits the legibility of Indigenous peoples’ inherent rights in relation to water in modern rights

disputes, such as those along Pigeon Lake. In what follows, I examine a selection of settler narratives that emerge out of this region during the 19<sup>th</sup> century, and which I identify as powerful articulations that work to propagate British-colonial logics of possession and a liberal order onto Indigenous lands and waterways. In particular, through their essay form, the instances of settler life-writing I explore work to inscribe the “possessive individual” of the liberal order onto Indigenous lands and waters (Macpherson 2010). I then examine how the assumptions expressed through such narratives become incorporated into and echoed through one of Canada’s oldest regulatory statutes, and what has more recently been viewed as Canada’s oldest piece of environmental legislation, the Navigable Waters Protection Act (recently amended to the Navigation Protection Act in 2012).

I locate my analysis, first, along and within the Trent Severn Waterway, through the prominent and now immortalized settler writing of Catharine Parr Traill, and her lesser known brother-in-law, John Wedderburn Dunbar Moodie (here after J.W.D Moodie). Traill and, to a lesser extent, Moodie, have been canonized as integral to Canadian Literature—Traill through her prolific writing career as a “female emigrant” in the backwoods of Canada, and Moodie, although an active writer in his own right, predominantly through the popularity of his wife, and Catharine’s sister, Susanna Moodie. Through their distinct narrative styles, taken together, these writers may be read as contributing to the discourse that extended and embedded a settler liberal order, carried from Britain and established in the “new world” of Upper Canada. I argue that the quotidian nature of Traill and Moodie’s writing works to give voice and justification to settler dispossession of Indigenous lands and waterways. More particularly, I show how

through their narratives, Traill and Moodie cannot be disentangled from the formation of settler water worlds—how through liberal notions of property rights, the almost immediate refiguring of water into a utility, and through water’s mobilization as a symbol for settler futurity, and for settlement itself, water is registered in ways that flow outward, undermining the rights of Indigenous peoples, as they actively and materially unmake Indigenous water worlds.

These first-person commentaries may appear inconsequential in and of themselves, but I will follow their assumptions and expectations up river, showing how the same logics of a settler liberal order around water are carried into one of Canada’s oldest regulatory statutes, the Navigable Waters Protection Act. While the Navigable Waters Protection Act (hereafter NWPA) has more recently been championed and defended as an important piece of environmental legislation, I will examine how it is premised on the same settler registers of water discussed above, carrying the settler logics of possession expressed through Moodie and Traill into every single waterway across the northern part of Turtle Island. With the NWPA’s current, albeit misplaced, status as environmental protection, I trace its incorporation into the governance structures of late liberalism and its consistent mobilization as a means of ensuring Indigenous water rights remain legible only within the confines of settler colonial registers of water.

As McKay notes, “One can read as much 'liberal ordering' into inheritance patterns, or the conception of the household as a 'private sphere' ruled by an authorized free-standing individual patriarch, or even in the location of a particular fence post, as one can into the National Policy” (2000, 638). Here McKay draws on C.B. Macpherson’s notion of “possessive individualism,” wherein the liberal individual is understood as

“essentially the proprietor of his own person or capacities, owing nothing to society for them.” “Society,” continues Macpherson, becomes a lot of free equal individuals related to each other as proprietors of their own capacities and of what they have acquired by their exercise. Society consists of exchange between proprietors” (2010, 3). Society in the settler context, and in the context of settler life writing, I would add, also consists of how individual settler subjects write themselves in relation to other human subject, especially the Indigenous peoples that had preceded them, and to the lands and waters they have come to inhabit in the British Colony. Just as much as the legislative powers of state policy, Moodie and Traill’s life-writing orders the settler landscape and waterways, working as spatial strategies to manage and dispossess Indigenous populations while making room for the British and ensuing settlers.

State legislation and settler life-writing should thus be viewed as two interrelated sites where settler social and subjective identities become formed, and through which material worlds are constructed. In reading legislation alongside early settler life-writing, I offer an image of both the subjective and broader social discursive forms—which are of course not mutually exclusive categories—that work together as powerful material ordering practices, and which organize the settler state, lands, and waters around particular values, motifs, and ideologies. Thus, through this relational, comparative reading, I examine the production of settler colonial water worlds, the liberal rights discourse that they are founded on, and the ways in which water, as a paradoxical force, is able to carry a settler liberal order across Turtle Island, delimiting the legibility of Indigenous worldviews, legal orders, and the inherent rights that they uphold. I then conclude this chapter by returning to Pigeon Lake, reiterating how the subjectivities and

policies formed, articulated, and established in and through the waterways of 19<sup>th</sup> century Canada constructed the material conditions for the distortion and containment of the inherent rights of Indigenous peoples in our contemporary moment, and more importantly, how Indigenous peoples continue to assert and remake their own material water worlds despite these settler colonial incursions.

### *The Subjectification of the Liberal Order*

I begin my analysis with Moodie and Traill because taken together, their writing offers an enactment of what Jennifer Henderson, building on McKay's liberal order framework, refers to as the "liberal experiment" of the settler colony that was to become Canada (2003). Within McKay's liberal order, Henderson writes, "Canada's existence is less self-evidently foreordained; it is reframed as the product of a complicated process involving the "*extensive* projection of liberal rule across a large territory and *intensive* subjectification, whereby liberal assumptions are internalized and normalized within the dominion's subjects" (McKay qtd. in Henderson 5). This notion of subjectification in McKay, here emphasized by Henderson, draws on the Foucauldian conception of power that conceives of subjects as constituted within and through discourse, produced as objects of knowledge, in relation to other subjects, and as self-governing individuals that transform and reproduce their own subjectification. In short, subjectification is the "the different modes by which . . . human beings are made subjects" (Foucault 1982, 212). I begin my historical analysis of the waters that now comprise the Trent-Severn Waterway at the level of the subjective because writers like Moodie and Traill make up what McKay refers to as the "active superstructures of a future base they earnestly struggled to

build” (637); as Henderson notes of McKay’s concern for the subjectivity of such “liberal activists,” “it was the ultimate coherence of their vision of a liberal order functioning across an array of social formations and territories that produced the Dominion of Canada” (6). Moodie and Traill offer two salient examples of the intensive subjectification of a settler liberal order, which is both internalized, and also projected onto and into the newly settled lands and waterways. Where these liberal assumptions order and reterritorialize the landscape in every conceivable way, I am particularly interested in how the liberal logics expressed by these two writers, whether explicitly or implicitly, offer important cues for the liberal ordering of waters across Turtle Island that began to take root in Upper Canada throughout the 19<sup>th</sup> century.

Like the settler feminist writers taken up in Henderson’s 2003 *Settler Feminism and Race Making*, Moodie and Traill, albeit in very different ways, represent prototypical liberal reformers whose articulations of liberal forms of governance, along with their implications in race-making, both inside and outside of formal politics, had profound effects in relation to the normalization and establishment of a settler liberal order. Of the type of writers most adept at projecting the tenets of a settler liberal order, Henderson writes,

In order to recapture this sense of Canada as a project of rule—as the precarious and contested realization of a scheme to extend the government of ‘freely’ self-governing individuals (and the exclusion of deficient remainders) across a new space and into an indefinite future—it is helpful to take one’s point of departure from the transatlantic perspective of the nineteenth-century liberal reformer, from whom Canada was not so much a new home as a testing ground for the political principles and practices of liberalism. (5-6)

With both Moodie and Traill’s pieces published less than two decades after the Upper Canada rebellions, and in the same moment where McKay situates the starting point of

his liberal order framework, their writing can be understood as two distinct sides of the same reformist settler colonial coin; where Traill provides a kind of practical domestic manifesto for the survival through reason of the female emigrant and her family along the Anishinaabeg's waterways, Moodie offers a narrative of rational national progression, of a nation emerging from the uncertainty of the bush, confident in its highly quantifiable development and its negation of existing inhabitants, laws, and ways of life. Traill, through her purposeful domestic rationalism, and Moodie through his public-facing, masculinist narrative of collective improvement can also be understood as operating within their respective masculine and feminine spheres of separate activity, a separation that was important to the social construction of 19<sup>th</sup> century British society (Henderson 2003). Put another way, we can understand Moodie and Traill as representative of the co-constitutive masculine and feminine subjectifications of the settler liberal order. Where Moodie represents what Daniel Coleman has referred to as the allegorical figure of the "Loyalist brother," and more generally, an extension of "the central organizing problematic of English Canadian whiteness"—"a specific form of civility modelled upon the gentlemanly code of Britishness" (2006, 10), Traill occupies what Henderson has described as "the paradoxical, double-edged position of a template for problems of self-government and an expert in the repair or improvement of these problems in others" (39). Within their respective, but related "spheres," their words and sentiments articulate the requirements for liberal forms of self-government, the logics of race making, and the establishment of a liberal rights regime around property that extends, if sometimes unsuccessfully, to the unruly waterways of Turtle Island.

While substantive studies have been done on how early settler writers like Moodie and Traill internalize and project particular forms of liberalism, whiteness, and settler governance structures onto the settler colony<sup>37</sup>—how these figures are produced through the “heterogeneity of the legal-political form of the state’s power, on the one hand, and the multiplicity of practices of discipline and tutelage grounded in ‘spontaneous’ power relations on the other” (Henderson, 29)—in what follows, I specifically examine the relationship between such settler writing and the establishment and extension of liberal forms of government into the important waterways that make up the Trent-Severn. This is to say, that I am less concerned with the larger context of Traill’s prolific writing, or J.W.D Moodie’s relation to the work of his much more famous and oft-cited wife, Susana Moodie, than I am to what the brief examples I draw from offer in terms of understanding the emergence of liberal rights discourse in the waters of Upper Canada, and the ways in which this discourse limits both the legibility of Indigenous rights today, as well as the material conditions that would allow Indigenous worldviews and legal orders around water to proliferate.

### **Catharine Parr Traill and the Liberal Incorporation of “Indian Rice”**

Even before Catharine Parr Traill arrived and settled with her husband along the Otonabee River, about 45 kilometres east through the waters connecting Pigeon Lake and

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<sup>37</sup> As the sources quoted in this section illustrate, Jennifer Henderson’s 2003 *Settler Feminism and Race Making in Canada*, along with Daniel Coleman’s 2006 *White Civility*, offer two of the most comprehensive studies on the relationship between early settler literature and the formation of liberal Canadian governance. Margery Fee’s 2015 *Literary Land Claims* and Rachel Bryant’s 2018 *The Homing Place*, draw out further connections between early settler cultural production and the disavowal of Indigenous sovereignty and worldviews.

about 50 kms up river from Rice Lake, the Mississauga Anishinaabe had already begun to lose their territories in the surrounding watersheds. The territories of the Anishinaabeg were reduced to a number of small reserves in the region through the signing of the 1818 Rice Lake Treaty No. 20. Treaty No. 20 was one of many treaties negotiated on behalf of the Crown with Indigenous peoples during the 19<sup>th</sup> century where terms remained unclear and misunderstood, or which were written in ways inconsistent with the good-faith reciprocal agreements that Indigenous nations thought they had negotiated. Famed Anishinaabe author George Copway addressed the specific implications of Treaty No. 20 and its deceptive reduction of Anishinaabeg lands in and around Rice Lake, writing,

They [those who made the agreement on behalf of the Anishinaabeg] were repeatedly told by those who purchased for the government, that the islands were *not* included in the articles of agreement. But since that time, some of us have learned to read, and to our utter astonishment, and to the everlasting disgrace of that *pseudo* christian nation, we find that we have been most grossly abused, deceived, and cheated. Appeals have been frequently made, but all in vain. (1851, 66, emphasis in original)

With the loss of islands, in addition to huge swaths of Anishinaabe territory along the banks of the waterways, the destruction of the vulnerable rice beds was swift and far-reaching. While the Mississauga Anishinaabe continued to traverse their ancestral waterways and practice their harvesting rights to the wild rice, ensuing groups of settlers, commercial development, and the eventual flooding of the region would drastically reduce the proliferation of wild rice and compromise engagements with the watershed premised on Anishinaabe worldviews and ways of knowing.

Catharine Parr Traill emigrated to the waterways of the Mississauga Anishinaabe with her husband Thomas Traill, in the summer of 1832. Settling in the “backwoods” of Canada along the banks of Lake Katchewanooka, a thoroughfare of the Otanobee Rivers

system, leading south to Peterborough and Rice Lake, and north and north-west to Stoney Lake, Curve Lake, and Pigeon Lake, Traill made her home in the heart of both Anishinaabe territory, and what was to become the Trent-Severn Waterway. While Traill is of course not responsible for the situation of the Anishinaabeg at the time of her arrival, the ways in which she relates to the region's Indigenous inhabitants, as well as her framing of wild rice in particular, is illustrative of a progressive strand of the liberal order that was being established throughout Upper Canada during the time of Traill's writing. Traill is consistently engaged with the Anishinaabeg throughout her life, and exhibits a genuine interest and sympathy to her "Indian friends"<sup>38</sup> whom she views as neighbours. As Carol Gerson notes of both Traill and her sister Moodie's literary accounts of Indigenous women, "they develop an experiential mode of discourse that communicates both their genuine engagement with the Other and their projection of their own otherwise unarticulable concerns as women and mothers" (1997). While Gerson is careful to critique Traill and Moodie's mobilization of the noble savage trope, as well as their inclination toward what Terry Goldie calls "indigenization"—"the impossible necessity of becoming Indigenous" (1989, 14-17)—as a response to not being able to openly convey their own disempowerment and maternal anxiety in their public texts, I assert that Traill, for her part, is enmeshed in a more structurally problematic process of Indigenous dispossession, erasure, and cooptation within the Anishinaabeg's watershed. As Henderson notes, "The feminine personification of Canadian literary expression

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<sup>38</sup> While Catharine's sister, Susanna Moodie most consistently refers to her "Indian friends" throughout *Roughing it in the Bush*, Traill donated her collection of artifacts to the Peterborough Historical Society, writing, "a free gift to me from my esteemed Indian friend, Mrs M. Jane Loucks, of Hiawatha" (*Evening Review*, Peterborough, 14 May 1897).

occludes important historical questions about the relationship between settler women's narrative self-representations and the microphysics of power in a settler colony" (4). I am specifically concerned with the microphysics of power at work in Traill's mobilization of Anishinaabeg knowledge systems at the same moment she laments the loss of, and through her writing, takes part in the destruction of these knowledge systems.

Less interested with the social aspects of the Indigenous inhabitants of the region than her sister Susanna, Traill often writes from the perspective of a naturalist, attempting to understand and make use of Indigenous ecological knowledge in relation to the "new world" plants and animals (Gerson 1997). A writer before her emigration to Canada, Traill was most famous for her instructional-style guides to life in the backwoods of the new settler colony. Her most notable text, published in 1836, and titled *The Backwoods of Canada: Being Letters from the Wife of an Emigrant Officer, Illustrative of the Domestic Economy of British America*, offers a portrait of "a persevering, buoyant and resourceful woman adapting to a new life and place" along with an "encyclopedic cataloguing of the details of her new surroundings" (Besner 2006, n.p.). Traill was largely concerned with describing natural scenery, illnesses and remedies, Canadian customs, and of course the knowledge derived from her interactions with the Mississauga Anishinaabe of her new home (Besner 2006; Bigot 2014; Cooke and Lucas 2017). While Corinne Bigot suggests that Traill "gave meaning and value to Indian knowledge" (2014, 104) she also highlights how by referring to the woods as "the unsettled portions of the country," and through her categorization of plants she could not identify as "nameless" (Traill 1836, 87-8, qtd in Bigot 104), "Traill suggests she first sees Canada as a terra nullius waiting for European order" (Bigot 104-105); Bigot continues, "Traill's first descriptions produce a vision of

the colonized country as a storehouse of Native flora waiting for the civilizing ordering of the narrator's European science" (104-105). Where Bigot ultimately champions Traill's bolstering of "Indian knowledge," I read her relation to the Anishinaabeg as little more than, to draw from Povinelli, the espousal of "a domesticated nonconflictual "traditional" form of sociality and (inter)subjectivity" (2002, 6). Traill enframes the relational, cultural, and spiritual world of the Anishinaabe as being solely of "domestic" interest for the settler homemaker, as practical, rather than political, and available to the positivist classification of her rationalist female survival guides. Anishinaabe cultural knowledge is upheld as "traditional" and useful, but ultimately not present in a way that complicates Traill's own presence in their waterways. While Traill is firmly located in the 19<sup>th</sup> century subjectification processes of a liberal order, her incorporation of Indigenous knowledge while negating or bracketing the destruction of the Anishinaabe lifeways required for the maintenance of this knowledge anticipates the late liberal modes or recognition discussed in the next chapter.

To be sure, Traill's treatment of the Mississauga Anishinaabe—her valuing and mobilization of their knowledge, along with its appropriation and co-optation, her exploitation of their cultural difference for a British audience, in addition to her sympathetic characterizations of them as friends and neighbours—offers a complicated portrait of settler engagement with Indigenous peoples. Following the work of thinkers such as Henderson and Povinelli, my critique of Traill is not to suggest that her treatment of the Anishinaabeg and their knowledge systems was in any way exceptional or unordinary. Indeed, there is a tendency to read settler women's writing such as that of Traill and Susanna Moodie as both implicated in colonial processes, while also recouping

them for their progressive female subjectivity (see Bigot 2014; Gerson 1997; Mills 1991, 1994, 2005; Peterman 2007). While reading settler women authors for their redemptive qualities may also work to challenge the patriarchal character of colonialism, I complicate this practice of recuperation in order to better understand the multifaceted operation of a settler liberalism that infiltrates and reshapes Indigenous waterways and sets the groundwork for the legibility of Indigenous rights moving forward—how, in Povinelli’s words “a discursive, affective, and institutional calculus of citizenship and nationalism—the liberal aspiration for a rational nonviolent form of association based on competing knowledges and moral values—is intercalated in legal, public, and state assessments of indigenous claims for material compensation for colonial harms” (2002, 6). Traill’s writing about and sentiments toward the Anishinaabe—her aspirations to give voice and value to Anishinaabe knowledge systems, for example— is deeply implicated in the “territorialization of liberal norms” within existing Anishinaabe water worlds (Henderson, 16).

For Henderson, “The settler woman occupied the site of the *norm*, not a position outside of culture and external to the machinations of power” (4). To echo my introduction, it is therefore useful to understand the ways in which settler colonialism was put into practice by ordinary people, and not just by governments. There is perhaps nothing more ordinary or quotidian seeming, then, than Traill’s publication of a cookbook. Traill published *The Female Emigrants Guide to Canada and Hints on Canadian Housekeeping* (hereafter *Guide*) in 1854 in an attempt to help settler women navigate the new food-ways of the settler colony (Cooke and Lucas 2017). Traill’s *Guide* is arguably the first authentically Canadian cookbook, and “is the best example of a

detailed public account of settler life in Canada's backwoods during the 1850s, especially from the female point of view" (Cooke and Lucas 2017, xxii). These reasons make the *Guide* an important site of study for understanding the positionality of the settler woman, and her relation to both the political and social dimensions of a settler liberal order taking root in the Anishinaabeg's waterways during this period. In the introduction to a 2017 critical re-publication of the *Guide*, editors Nathalie Cooke and Fiona Lucas write, "The *Guide* provides a detailed glimpse of the way Upper Canada functioned as what Alison Norman has called a culinary "contact zone," characterized by the exchange of foods and cooking styles between First Nations and settlers and the creation of "hybrid" cuisines" (xiv-xv). Cooke and Lucas, are careful however, not to characterize this exchange as necessarily reciprocal, since for the Anishinaabe, "The shift from consumption of local foods such as game meat, berries, and wild rice to consumption of flour, sugar, and lard signals the beginnings of a transition from a healthy diet to a deficient industrialized one" (xv).

While Traill's *Female Emigrant's Guide* is rich with recipes revealing how "settlers made use of Indigenous food items, both borrowing and adapting First Nation's preparation techniques" (xvi), I am primarily concerned here with its treatment of wild rice, and how this treatment offers clues for understanding larger processes of settler colonialism in the waterways that would comprise the Trent-Severn. Traill had written about wild rice in previous publications, including *The Backwoods of Canada*, initially characterizing the plant in ways disconnected from its relation to the Anishinaabeg (Krotz 2017, 20). In *Canadian Wild Flowers* (1868), Traill describes wild rice "with its floating leaves of emerald green, and waving grassy flowers of straw colour and purple" (72). As

Sarah Whyllie Krotz notes, “Traill the word painter comes to life in such passages, making her case for the preservation of native plants that her fellow settlers all too frequently dismissed as ““nothing but weeds”” (21). While Krotz notes that it was not until *Studies of Plant Life in Canada* (1885) “that Traill commented on the importance of wild rice to the local Mississauga,” this connection was in fact made thirty years prior in the publication of *The Female Emigrant’s Guide*. It is the *Guide’s* characterization of both the Anishnaabeg’s and settler’s relationship to wild rice, and this characterization’s location within the quotidian form of a cookbook, that I find to be most illustrative of both Traill’s intensive subjectification and extensive projection of liberal rule within the Mississauga Anishinaabeg’s waterways. While Traill is of course deeply enmeshed in the subjectification of the settler woman, subject to and produced under the discourses of the domestic sphere herself, her incorporation of Anishinaabe knowledge into the domestic form of the cookbook extends this subjectification in ways that neutralize and disavow Anishinaabe political presence in the region.

*The Female Emigrant’s Guide* provides a section on grains, under which Traill includes “Indian Rice” (2017, 112). Before offering recipes on “wild-rice pudding,” “stewed-rice thickened,” and “Indian rice in soup,” Traill provides an overview of wild rice and its harvesting. She asserts that “Indian Rice is a wholesome and nourishing article of diet, which deserves to be better known than it is at present” (111). She describes the conditions required for its growth: shallow, still waters with little current “where there is a great deposit of mud and sand” (111). Foreshadowing the complaints of twenty-first century cottagers at Pigeon Lake, and effacing the agency of the Anishinaabe who would have actively ensured the proliferation of wild rice, she writes, “these beds

increase so as to materially fill up the shallow lakes, and impede the progress of boats on their surface” (111). Negating the effects of her own presence, and that of an increasing settler population, Traill uses the present-tense to explain how “the month of September is the Indian’s rice harvest,” and that they “collect it by paddling through the rice-beds, and with a stick in one hand, and a sort of sharp-edged, curved paddle in the other, striking the ripe heads down into the canoe, the ripe grain falling to the bottom” (112). Traill describe the drying practice of the rice “for which Indian women are renowned” (112). While Traill’s appreciation of wild rice, along with her attention to the Anishinaabeg’s harvesting and preparation practice is evident throughout this section of her *Guide*, there are two revealing moments which implicate her in the long history of reshaping the Anishinaabeg’s water system, and their integral practice of wild rice harvesting in the image of a settler colonial liberal order.

Traill’s assertion that the practice of wild rice harvesting ought to be better known is offered further commentary later in her overview, as she states that the presence of Indian rice “is dearer now than it used to be, as the Indians are indolent, or possibly employed in agricultural pursuits or household work” (112). The implication that the Anishinaabeg’s wild rice harvesting practices were decreasing due to laziness, or their preoccupation with other harvesting pursuits both registers and obscures the ways in which settlement in the region, Traill’s family’s included, was vastly changing the foodways and lifestyles of the Anishinaabeg. Cooke and Lucas elaborate:

In Traill’s description of harvesting wild rice, it is unclear whether she fully understood how carefully the Mississauga Anishinaabe had nurtured this resource to ensure its sustainability and how much settler society had disrupted their sustainable food practices. In fact, rather than attributing the dwindling supply of wild rice to the impact of new settlement on traditional harvesting practices, Traill concluded it was

due to the “Indian” being “indolent, or possibly, employed in agricultural pursuits or household work. (xviii)

This is a striking oversight on Traill’s part, and lays bare the violence of her naturalist approach to Indigenous knowledge. While Traill catalogued and described a number of Anishinaabeg food harvesting and preparation techniques, she does not register the guiding principles behind them. Further, while Cooke and Lucas suggest that Traill was “unaware of the impact settler colonialism and the lack of careful stewardship had on natural resources” (xviii), she illustrates a nuanced understanding of the Anishinaabeg’s situation in the later publication of *Studies of Plant Life in Canada*. Of the Mississauga Anishinaabeg, Traill writes, now “confined to their villages,” they were cut off from the “resources that formerly helped to maintain them” (104, qtd. in Krotz, 21); she adds, “Were it not going beyond the bounds of my subject, I might plead earnestly on behalf of my destitute, and too much neglected, Indian sisters and dwell upon their wants and trials; but this theme would lead me too far away from my subject” (105 qtd. in Krotz, 21). As Krotz notes of Traill’s imposed positionality as a naturalist, “Her ‘subject’ is the native botany of early Canada in the environs of her homesteads, and here the generic constraints of the botanical guide foreclose the kind of action that her contemplation of wild rice otherwise prompts” (21). While Traill’s turn to the science of botany could be read as straining against the limits of domestic expertise allowed to her, we can see how the genre imposes its own constraints through its universalizing Enlightenment perspective. Traill at once puts pressure on the limits of her position within the domestic sphere, and reinforces the operation of a liberal order through its exclusionary, universalizing logics. As Traill benefitted from guides aiding in the settlement and proliferation of her female settler counterparts—with the aid of Anishinaabeg knowledge

systems—the Anishinaabeg struggled to adjust to the violent remaking of their watershed. To put it bluntly, as food historian Ian Mosby states, “while [Traill] was roughing it in the Bush, Anishinaabeg peoples were starving” (2017).

The second moment in Traill’s overview of wild rice, which I argue firmly locates her writing within the establishment of a settler liberal order in Anishinaabeg waters, is her situating of the Anishinaabeg’s cultural practice in relation to the power relations of the 19<sup>th</sup> century liberal economy. In concluding her overview of “Indian Rice,” Traill writes, “In appearance this is not the least like the white rice of commerce. . . . The gathering of wild rice is a tedious process, and one rarely practised by the settlers, whose time can be more profitably employed on their farms” (112). Here Traill distinguishes manomin from “the rice of commerce,” that which would have been brought to the settler colonies through centuries of European imperialism and colonialism across Asia. She also locates the practice of harvesting wild rice outside of the progressive and profitable time of settlers’ agrarian economy. Negating the very recent shift from a dominating fur trade economy, one developed and supported by Indigenous peoples, to an increasingly industrialized and monopolized fur trade, agrarian, and lumber economy, Traill situates the Mississauga Anishinaabeg as the victims of European progress assumed to be inevitable (Daschuk 2013, xi). Coleman addresses the “racialized concept of time” propagated by liberal settler colonialism—or what he refers to as white civility—as that which “equated whiteness with modernity and the administration of industrial development and non-whiteness with pre-modern backwardness and manual labour” (30). As Traill implies, the harvesting of wild rice could not be incorporated into the agricultural or industrial practices of 19<sup>th</sup> century Canada and was therefore deemed

tedious and unprofitable for settlers; growing amongst the shallow waters of Rice Lake, the rice also remained outside of liberal property regimes and the enclosures of settler farmlands, and thus not a viable or valuable means of bolstering the settler nation state. In fact, as the contemporary rice disputes at Pigeon Lake illustrate, and as I will further show in my discussion of the Navigable Waters Protection Act below, the proliferation of wild rice within the waters that were to become the Trent-Severn Waterway was actually antithetical to the progress and development of Upper Canada.

For Traill then, the harvesting of wild rice is reduced to a notable, and quickly fading cultural practice which exists outside of settler colonial space-time narratives of progress and development. It is not part of the liberal settler economy, and therefore represents little more than an anecdote in a cookbook. “But I have nevertheless given this description of harvesting it,” Traill continues,

as it is not devoid of interest, and, should this book fall into the hands of any person, who by accident was reduced to having recourse to such expedients as the wild country afforded, for food to keep themselves from starving, they might be able to avail themselves of the knowledge. Men who have gone up lumbering, on the shores of lonely lakes and rivers, far from the haunts of civilized men, have sometimes been reduced to worse shifts than gathering wild rice to supply their wants. (112)

In these concluding sentences of Traill’s overview of “Indian Rice” she at once reduces Anishinaabeg territory to “wild country,” and the “lonely lakes and rivers,” devoid of “civilized men,” while somewhat ironically characterizing wild rice’s value as sustenance for the starving settler at the very moment that the Anishinaabeg themselves would have found themselves starving given the depletion of their wild rice beds. Traill incorporates the wild rice of the Anishinaabeg as an important tool and resource for settler survival on Indigenous lands, despite her own recognition of the Anishinaabeg’s loss of “resources

that formerly helped to maintain them.” Traill’s relation to the wild rice is couched in liberal logics of possession, wherein the significance of manomin to her Mississauga neighbours—a significance Traill herself articulates in both the *Female Emigrant’s Guide* and *Studies of Plant Life in Canada*—is undermined as an inevitably declining cultural practice, and then recuperated as a trivial anecdote for settler survival. Traill does not ignore or even wholly invalidate Indigenous knowledge; rather, she subsumes this knowledge into the settler liberal order while bracketing the political plight of the Anishinaabe whose culture she takes such keen interest in. This appropriation of the Anishinaabeg’s wild rice on behalf of Traill represents what Margery Fee calls a “literary land claim,” contributing to “discourses of extinguishment, disappearance, and extermination” so prevalent within 19<sup>th</sup> Canadian literature (2015, 224). In Moreton-Robinson’s words, such settler claims to Indigenous territory illustrate the “possessive logics” of settler colonialism, which “denote a mode of rationalization . . . that is underpinned by an excessive desire to invest in reproducing and reaffirming the nation state’s ownership, control, and domination” (xii). Traill’s writing, in the form of settler guides and studies of the flora and fauna of the settler colony, rationalizes both the Anishinaabeg’s loss of their integral cultural practice, as well as settlers’ co-optation of such practices, should it serve settler survival on Indigenous territories.

The power of this possessive rationalization can be seen in an iteration of Canada’s ‘rice wars’ which precedes the conflict at Pigeon Lake by several decades. In 1960, over one hundred years after Traill’s incorporation of the Anishinaabeg’s wild rice harvesting practices into her *Female Emigrant’s Guide*, Ontario passed the *Wild Rice Harvesting Act*, unilaterally asserting its authority over rice harvesting, as it instigated a

system of harvesting licences, enforcements, and penalties (Lawrence 2012, 140). The Ontario government would be engaged in disputes with the Anishinaabeg of Treaty 3 in north-western Ontario, the Algonquins of what was to become the Ardoch Algonquin First Nation north of Kingston, and the Mississauga of Alderville and Curve Lake First Nations near Rice Lake for the next twenty years, as they attempted to limit Indigenous harvesting of wild rice while issuing licenses to non-Indigenous commercial harvesters;<sup>39</sup> not unlike Traill, the government asserted the value of rice harvesting for the settler population and economy, while negating its significance, both historically and contemporarily, for the Anishinaabe. As Bonita Lawrence notes, for many of these First Nations, “manoomin constituted the “last stand” in repelling an absolute commodification of their way of life and in terms of developing a viable Native-controlled rice industry” (2012, 140). “For the federally unrecognized Algonquin community at Ardoch,” she continues, “manoomin represented an Algonquin practice that had maintained the community and connected it to a heritage and spirituality that had been drastically curtailed when settlers took their hunting grounds and the land set aside for them” (14). While my discussion in this section is largely limited to the Mississauga Anishinaabeg in and around the Trent River Watershed, the implications of the *Wild Rice Harvesting Act* illustrates the ways in which various communities of the Anishinaabe Nation across Turtle Island are connected via their relationships to manoomin and the waters that have sustained these relationships.

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<sup>39</sup> The full history and implications of the *Wild Rice Harvesting Act*, and its significance for the Ardoch Algonquin First Nation in particular is beyond the scope of this discussion. For a detailed account of this dispute and the emergence of the Ardoch Algonquin First Nation see Geri Blinick’s MA thesis, “Manomin (Wild Rice) in the Kiji Sibi (Ottawa River) Valley: An Exploration of Traditional Food, Development and Decolonization.” Bonita Lawrence’s *Fractured Homeland: Federal Recognition and Algonquin Identity in Ontario* (2012) also dedicates a significant section to this issue.

Traill's sentiments in 1855, in what is arguably Canada's first cookbook, and a guide specifically designed to enlighten settlers on the foodways of the 'new world' as well as existing practices of making use of these foodways, cannot be disentangled from this broader history of settler colonial assertions and justifications of jurisdictional sovereignty over Indigenous lands, waters, and cultural practice. Traill's writing performs the subjectification of a settler liberal order, demonstrating how to practice settler jurisdiction over Anishinaabe lands in quotidian ways. These practices work to justify assertions of jurisdictional sovereignty, as well as the persistent misreading, if not outright negation of Indigenous peoples' rights to the watersheds they have inhabited since long before settlers arrived on their shores.

"A liberal-order reconnaissance of Canadian history," McKay writes, "entails seeing how far and how complexly this principle of liberal order functioned across the wide array of social formations and territories that ultimately cohered, from the 1860s to the 1890s, into the Dominion of Canada" (637). Traill's literary treatment of the Anishinaabeg within the territory that has come to be known as the Trent River Watershed, and what would make up, in large part, the Trent-Severn Waterway, offers a partial and telegraphic example of this type of social formation. While McKay notes how the liberal order did not, in explicit terms, include the settler woman, her descriptions and observations, and the rationalist, utilitarian nature of her publications situate her as an important site through which to understand how liberal norms are internalized through "the conception of the household as a "private sphere" ruled by an authorized free-standing individual," and also how this conception was projected outwards in ways that would materially re-territorialize the Anishinaabeg's waterways (McKay, 638).

While McKay had the image of the self-governing patriarch in mind when articulating his liberal order framework, Jennifer Henderson reminds us how, “In the context of the settler colony, the formation of a liberal order involved the placement of the well-governed white woman at the centre of race making” (39); she continues “Within the field of the social, the bourgeois woman occupied the paradoxical, double-edged position of a template for problems of self-government and an expert in the repair or improvement of these problems in others” (39). We can thus see through Traill’s lament for the Anishinaabeg’s waning practice of harvesting of wild rice, her negation of the role of settlement in its decline, and her recuperation of the practice as a light-hearted solution for the potential starvation of settlers who find themselves in the “backwoods,” the situating of the liberal settler subject as the ultimate steward of wild rice in the region. As stewards, settlers and the settler state could negate, flood, and reclaim the rice beds as they saw fit, while consistently rendering Anishinaabe rights to the wild rice illegible within the progressive narrative of a burgeoning nation. Indeed, as Cooke and Lucas note, Traill’s writing represents “a world in flux” (xxiii), and taken together with other writers and emergent policies of her era, offers readers a partial image of how settler logics of possession and elements of a liberal order were established and expressed in different “spheres,” which had profound and wide-reaching consequences in terms of the ongoing rationalization of the dispossession of Anishinaabe territories, cultural practices and ways of life.

## J.W.D. Moodie and the Masculine Liberal Ordering of Upper Canada

If Traill's writing serves as an articulation of liberal self-government in the private domestic sphere—representative of the "historical construction of woman as a concentrated site of repair and supplementation of the capacity for self-government" (Henderson 2003, 14)—then J.W.D Moodie is more closely aligned with the "free-standing individual patriarch" that McKay had in mind in his liberal order framework: "What it meant to succeed, to own things, to shine as a success in the eyes of one's parents, to be a real man, to construct lines on maps and barriers around whole countries, to separate what's 'mine' from 'yours', 'ours' from 'theirs'" (638). Both writers comprise an important portrayal of the liberal experiment that was remaking Indigenous waterways within the Trent River Watershed during the 19<sup>th</sup> century. To be clear, however, it is not my intention to collapse important distinctions between masculine and feminine subjectifications of a settler liberal order. Rather, I follow Sunera Thobani's explanation of the figure of the national subject—in this case, the British colonial subject—as she writes, "In the trope of the citizen, this subject is universally deemed the legitimate heir to the rights and entitlements proffered by the state." "Even when disparaged as a gendered, sexed, or classed subject," she continues, "in its *nationality*, this subject positively commands respect as the locus of state power" (2007, 3-4). While Moodie and Traill's modes of expression are distinct, especially given their subject positions in the 19<sup>th</sup> century, I reiterate here, that taken together, their writing offers a partial, yet important expression of the locus of state power as it was being established and articulated in Upper Canada at this time, and especially as their national subjectivity was

articulated implicitly or explicitly in oppositional relation to the regions' Indigenous inhabitants.

J.W.D Moodie is implicitly the settler that Traill had in mind, “whose time can be more profitably employed on their farms” rather than through the tedious process of rice harvesting. This is least of all because Moodie and his wife, Susana, Catharine’s sister, resided across the lake from Traill and her husband’s homestead. More generally, Moodie is the male settler subject who embodies the logics of the property-holding individual that Traill draws on in her subtle articulation of the liberal settler economy’s relation to what she perceived as the “indolent” Anishinaabeg and their fading cultural practices. I turn from Traill to J.W.D Moodie because Moodie is representative of a specifically masculine iteration of the liberal order. To be sure, it was J.W.D’s wife, Susanna Moodie, who was much more predominantly taken up as a kind of representative settler voice in Canadian literary criticism in the mid-twentieth century.<sup>40</sup> As Cynthia Sugars and Laura Moss note, “[Susanna] Moodie’s work typifies what has become one of the enduring myths of Canadian literature: the settler as a victim of circumstance who must tolerate extreme hardship in order to survive” (2009, 208). Susanna then, also offers a salient example of a strand of settler liberalism, that while powerful in a way similar to her sister’s in the 19<sup>th</sup> century, has arguably become more aligned with a 20<sup>th</sup> century late liberal consciousness, and its “passion for recognition,” to draw from Povinelli (2002, 17). While Susanna is not where I turn to explore this form of late liberalism in my next chapter, her juxtaposition with her husband, J.W.D. is worth noting.

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<sup>40</sup> See for example, Margaret Atwood’s *The Journal’s of Susanna Moodie* and Armand Garnet Ruffo’s poem “Creating a Country.”

I foreground J.W.D. in this first chapter—who Margaret Atwood referred to as his wife’s “shadowy husband”—rather than his more prominent counterpart, Susanna, because J.W.D. Moodie’s performance of an objective voice and point of view better represents the violence of settler colonial spatializing practices and the settler colonial gaze of a distinctly masculine liberal order. I turn to J.W.D. because his chapter’s appendix to his wife’s much more prominent work, along with the imposition of the secure, masculine settler subject appended as a supplement to Susanna’s wavering, melancholic subject, has received very little critical attention. To take J.W.D out of the shadows is a way of responding to the feminine allegory of Canadian nation building that works to absolve Canada from settler colonial complicity (see Henderson 2003). As Carol Gerson notes, “Susanna chose a more interesting narrative strategy by dramatizing the process of her gradual acclimatization to her new environment (learning to milk cows, bake bread, and outsmart the Yankees); Dunbar [J.W.D. Moodie] adopted the more reliable but duller persona of the man of experience, already cognizant of basic factual matters such as the farming methods most suitable to various areas” (Gerson 1985, 39). Similarly, if Traill’s performative mode of signification occurs within the private sphere of the home, as domestic advice to her fellow female emigrants—advice deeply implicated in the “microphysics of power in a settler colony” (Henderson, 4), then Moodie operates as a kind of counterpart, projecting his liberal logics to ensuing groups of settlers that would take up the mantle of private property and the material remaking of Indigenous territories; Moodie’s audience is the “propertied individual”—those that comprise “the foundation of a sociopolitical order ultimately defended by the state’s legitimate violence” (McKay, 638).

In Moodie's brief essay, appended as a chapter to *Roughing It in the Bush*, he exemplifies McKay's emphasis on liberalism's "prior ontological and epistemological status" given to the individual (623). Moodie's writing offers an image of Canada as a nation building project, attempting "to plant and nurture, in somewhat unlikely soil, the philosophical assumptions, and the related political and economic practices, of a liberal order" (623). While Moodie's rhetoric emphasizes the "sacred and unalienable" right to private property, I am ultimately concerned with how the logics he expounds are both carried into his textual treatment of water, and also how water often escapes such liberal ordering practices. Moving from Traill to Moodie, and then to the establishment of the Navigable Waters Protection Act, allows me to trace the production of the relation between the subjectification of the liberal order, its projection, and the material ways that they reshape the water- and lifeways of Turtle Island.

*J.W.D. Moodie's "Canadian Sketches" and the Fixed Structures of a Settler Liberal Order*

Written almost two decades after his wife's famous sketches of life in Canada, J.W.D. Moodie's "Canadian Sketches" occupies an interesting place as the final chapter of Susanna Moodie's text, *Roughing it in the Bush*. Described by Susanna Moodie as a "strong and able chapter," J.W.D.'s brief sketch appeared in his wife's work in the publication of the 2<sup>nd</sup> Bentley edition in 1852.<sup>41</sup> Following almost 400 pages of what

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<sup>41</sup> Several of the chapters from Susanna Moodie's *Roughing it in the Bush* appeared as individual sketches before they were included in book form. These initial sketches were published in the *Literary Garland* (1847) and *The Victoria Magazine* (1847) before Bentley published the sketches in two editions in 1852. The second edition, which includes J.W.D Moodie's "Canadian Sketches," included a number of editions and editorial changes. Further editions from Bentley followed, as well as a number of condensed American editions, and various Canadian editions throughout the 20<sup>th</sup> century. I am reading J.W.D Moodie's

could just as rightly be described as ‘Canadian sketches,’ the title of J.W.D Moodie’s chapter is telling. J.W.D positions his short work as more contemporary than his wife’s, and thus better equipped, and more forcefully able to capture the realities of the emerging nation than Susanna’s more “somber” sketches, which, in J.W.D.’s words, were the result of the “difficulties and privations with which for so many years the writer had to struggle” (Moodie 1997, 385). Notably, J.W.D.’s “Canadian Sketches” is also juxtaposed in this same manner with his own chapters included in the body of *Roughing it in the Bush*. Moodie contributed “The Village Hotel,” “The Land-Jobber,” and “The “Ould Dhragoon” to the body of his wife’s text, with each chapter largely concerned with the same “difficulties and privations,” as the rest of Susanna’s work, albeit with more concern for explaining some of his own unfortunate financial decision-making that had led them to their present situation in the bush (see Gerson 1985).

J.W.D. situates his appended essay, “Canadian Sketches” then, as an updated and more forward-looking offering on settlement in Upper Canada. In reference to Susanna Moodie’s (and implicitly his own) previous sketches, and anticipating Susanna’s subsequent publication of *Life in the Clearing versus the Bush*, written after the Moodies had moved out of their home on Lake Katchewanooka and into the settlement of Belleville, J.W.D writes, “we should be sorry should these truthful pictures of scenes and characters, observed fifteen or twenty years ago, have the effect of conveying erroneous impressions of the present state of the country, which is manifestly destined, at no remote period, to be one of the most prosperous in the world” (385). J.W.D. Moodie positions his essay as the definitive Canadian sketch, representative of what he has deemed to be a

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“Canadian Sketches” by way of a reprint of the 2<sup>nd</sup> Bentley edition, published within a critical edition by the Tecumseh Press, 1997.

pivotal moment of progress. The colony has stepped out from the bush, with his wife's sketches now limited in their articulation of only a particular and difficult moment in time from which the country has now advanced.

The location of J.W.D. Moodie's "Canadian Sketches" at the end of *Roughing it in the Bush*, along with his deliberate narrative positioning, marks an important distinction from the more subjective dimensions of Susanna Moodie's preceding work. Indeed, Susanna Moodie might traditionally be thought of as the quintessential ambivalent settler subject, especially if we take Margaret Atwood's dramatization of her conflicted and disingenuous sentiments toward the Canadian backwoods seriously.<sup>42</sup> Alternatively, J.W.D Moodie's twenty-six-page chapter is one of facts, figures, and the presumption of fixed national progression. Moodie traces the development of early settlements in Upper Canada in almost excruciating detail. Carl P. Ballstadt notes that although Moodie's writing is "marred by a lack of logic in the development of his arguments, he is, through all of his prose, persistent in his advocacy of tolerance, liberty, and education" (2003, n.p.). To be sure, while the narrative of Moodie's "Canadian

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<sup>42</sup> Margaret Atwood's poetry collection, *The Journals of Susanna Moodie* (1970) is spoken from the point of view of Susanna Moodie, as Atwood satirizes Moodie's wavering stance on life in the backwoods of Canada. In "Thoughts from Underground," for example, Atwood writes from the perspective of a deceased Moodie, having relocated from the bush and died in the town of Belleville:

I said I loved it  
and my mind saw double.

I began to forget myself  
in the middle  
of sentences. Events  
were split apart

I fought. I constructed  
desperate paragraphs of praise, everyone  
ought to love it because . . .

The passage illustrates a conflicted Moodie, aware of the mobilization of her text toward the encouragement of settlement, while, as Atwood suggests, she in fact felt more ambivalent about settlement in Canada than her words often let on.

Sketches” lacks a clearly discernible argument, his essay foregrounds the tenants of liberalism, namely through his emphasis on the self-improving settler and the “primacy of the category of the individual” (McKay, 623). Specifically, Moodie’s meandering narrative celebrates Canadian settlement through a focus on settlers’ racial character, his rhetorical severing of ties with his British homeland, and common-sense descriptions of lists of population growth, import and export numbers, and the number of ships moving in and out of Upper Canadian ports—all toward the aim of championing the primacy of the self-governing liberal individual and *his* sacred and unalienable right to private property. In short, his essay reads as a kind of emigration-promotion pamphlet, amended to his wife’s less self-assured memoir of early settlement; it can be understood as a performance of white masculinity, presented as a supplement, or corrective, to the less confident, self-conscious narrative of his wife, Susanna. It is precisely the seemingly fixed nature of J.W.D. Moodie’s subject position that I find so interesting and illustrative of a settler liberal order that attempts to fix social and subjective identities to rigid relations of land tenure and water management.

J.W.D.’s facts and figures are presented as common-sense illustrations of a successfully developing colony. His descriptions of the burgeoning, prosperous colony are so self-assured, so matter of fact, that they serve as an ideal case study through which to explore the taken for granted logics of settlement that continue to structure settler Canadians engagement with land and water. As Gerson notes, drawing on Moodie’s previous publication, *Ten Years in South Africa* (1835), “His sincere belief in his own objectivity appears in his claim to both “give my own impressions without disguise on every topic on which I write” and to “avoid all reflections of a personal nature,” thereby

"leaving the reader to form such conclusions from the facts I mention as may suit his own particular mode of thinking" (39). Drawing again on Moreton-Robinson, Moodie enacts white possessive logics, which "are operationalized within discourses to circulate sets of meaning about ownership of the nation, as part of common-sense knowledge, decision making, and socially produced conventions" (xii). This common sense knowledge works to disavow existing Indigenous structures of land tenure as it treats the settlement processes of the nation as inevitable and without contestation—without treaties, agreements, wars, illegal land grabs, and without any assertions of autonomy on behalf of Indigenous peoples; it is what Mackey refers to as "settler certainty" and its corresponding "ontological certainty"; Mackey writes, "Western notions of private property, as well as hierarchical and racialized categories of personhood, are deeply related to securing certainty in land and ontological certainty for settler society" (33). As I will show, this ontological certainty is further exemplified through Moodie's almost complete evacuation of Indigenous inhabitants—the "Indian friends" whom both Susanna and Catharine Parr Traill consistently addressed, and who Moodie no doubt would have interacted with as well. Despite Moodie's predilection for the fixed logics of settlement, his "Canadian Sketches" betrays a discomfort with the unwieldiness he attributes to Canada's waterways, a sense that they might unmoor settler certainty in Upper Canada in ways that persist in the controversy over wild rice harvesting in cottage country today.

Moodie begins his essay by both discounting the previous work of his wife, Susanna, and by offering his own articulation of race-making in Canada. Moodie's narrative of Canadian progress relies heavily on popular racial theories of the time. Anticipating their more famous articulation in the later, 1869 lecture by Thomas Grant

Haliburton, *The Men of the North and Their Place in History*, Moodie emphasizes the northern character of Canadian settlers, writing, “When we consider the progress of the Northern races of mankind, it cannot be denied, that while the hardy races of the North with their severe climate, and their forests, have gradually endowed them with an unconquerable energy of character, which has enabled them to become the masters of the world” (386). Notably, the hardiness instilled by the northern environment does not extend to the Indigenous peoples that resided there long before European settlement, and which Moodie only implicitly addresses in his essay. Moodie’s racialized rhetoric, and his subsequent focus on settler land tenure, illustrates how, as Henderson writes, “race has been attached not just to bodies but also to forms of conduct” (18). Moodie describes North America as “peopled by a civilised and energetic race,” with this energy again only extending to settler development and not the practices of Indigenous societies, and wherein “without common roads, rail-roads, or canals, the interior of the country would have been unfit to be inhabited by any but absolute barbarians” (386). The barbarians that Moodie alludes to here are implicitly the Mississauga Anishinaabe, next to whom his family resided alongside during their time in the bush, on the Otonabee River—indeed the same Anishinaabeg from whom Traill garnered insights on the region’s foodways and whom Susanna idealistically, if problematically, refers to as “Nature’s gentlemen.” While Traill and Susanna Moodie situate the Anishinaabeg within nature as notable characters of the Bush, Traill’s relation of rice harvesting to the liberal settler economy, and J.W.D. Moodie’s almost complete disavowal of Anishinaabe presence in relation to settlement, represent narrative attempts to exclude the Anishinaabeg from the settler liberal order of the developing nation.

These narratives of exclusion are enmeshed within state initiatives that sought a particular kind of violent *inclusion* of Indigenous peoples into the liberal order. It is important to note here that there is a complicated relation between exclusion and inclusion within liberalism; indeed the Mississauga Anishinaabe as they exist as a distinct Indigenous nation with their own worldview and ways of life were actively excluded through the establishment of a liberal order in Upper Canada. Conversely, a liberal order sought to incorporate the Anishinaabe in various ways into its own tenets of property-holding citizenship. While many assimilation policies would follow, the Gradual Civilization Act of 1857 was one such policy wherein the attempted inclusion of Indigenous populations into the body politic was undertaken. Robin Jarvis Brownlie elaborates, writing, “The colonial policy of assimilating First Nations people, first developed in the mid-nineteenth century, was clearly a liberal initiative that sought to turn culturally distinct, communally-oriented opponents into individualistic, private-property-owning liberal subjects” (2009. 299). As contemporary disputes over wild rice along Pigeon Lake illustrate, and as Brownlie is careful to assert, “Since its inception, this initiative has met broad-based resistance, fought in the fields of culture, education, law, and politics” (299). While I will explore liberalism’s complex attempted incorporation of different forms of subjectivity in greater detail in chapters two and three, I highlight this relational process of exclusion and inclusion here in order to illustrate that while Traill and Moodie’s narratives function to disavow or appropriate Mississauga Anishinaabe cultural practices, worldviews, and presence in various ways, these processes occur within the complex terrain of liberal inclusion. While Traill draws on Indigenous knowledge in her domestic writing, the Anishinaabeg are absent in Moodie’s

narrative of national progression due the very broad-base resistance that Brownlie highlights. They are not easily incorporated into Moodie's narrative of progression as Mississauga Anishinaabe peoples, and therefore escape his detailed accounting of the settler landscape.

In addition to foregrounding the racial character of the enterprising settler subject, as well as situating this subject as the product of the sacrifice of the earlier settlers, and those of his own family, with his wife's previous sketches effectively (and affectively) laying out the trials and tribulations that have led Canada to its present moment of prosperity, Moodie also emphasizes a marked separation from his countrymen in Britain. The settler subject and his resolute ordering of space is positioned within a narrative of improvement and progression in relation to his British counterpart, given the settler's necessary ingenuity in the face of an obstinate landscape. Of his countrymen back in England, Moodie writes, "The farmer in the more improved country generally follows the beaten track, the example of his ancestors, or the successful one of his more intelligent contemporaries; he is rarely compelled to draw upon his individual mental resources" (387). Juxtaposing this image against the Canadian settler, Moodie continues, "Not so with the colonist. He treads in tracks but little known; he has to struggle with difficulties on all sides. Nature looks sternly on him, and in order to preserve his own existence, he must conquer nature, as it were, by his perseverance and ingenuity" (387). The colonial subject that emerges is undeniable to Moodie: "Each fresh conquest tends to increase his vigour and intelligence, until he becomes a new man, with faculties of mind which, but for his severe lessons in the school of adversity, might have lain for ever dormant" (387). In Moodie's attempts to separate the Canadian settler from the British homesteader, he

draws heavily on pre-existing liberal English discourses of strength through adversity.<sup>43</sup> Indeed, his rhetoric here is stringently in line with the ideology of liberalism, and the primacy of the self-improving, self-governing individual—“what it meant to succeed, to own things . . . to be a real man” in McKay’s words (638). Despite his rhetorical separation from his British ancestors, Moodie’s sentiments are representative of “classical liberalism inherited from Britain and developed afresh in northern North America” (641).

Further, Moodie’s attempted bifurcation of Canadian settlers from his British countrymen, I argue, is also illustrative of the Loyalist discourse that was integral to a unified liberal order in the Canadian nation state. Moodie’s rhetorical separation of his idealized settler subject from his British countrymen in the middle of the 19<sup>th</sup> century can be understood through what Daniel Coleman calls the “figure of the Loyalist brother” and its corresponding allegory of fraternity/fratricide (46). Loyalist literature was a predominant mode of literary production in 19<sup>th</sup> century Upper Canada, and one in which Moodie was embedded, given his role in stamping out the Upper Canada Rebellion (1837-1838), and his subsequent posting as Sheriff of Hastings District in 1839 in recognition of his Loyalist support (Gerson 1990). Coleman explains how the figure of the Loyalist brother depended on the mobilization of “the allegory of fraternity” and “its menacing corollary of fratricide” which, together, functioned “to manage considerable anxieties at play in the contested field of loyalist discourse” (2006, 47). Coleman elaborates, “The allegory of fraternity that recurs throughout Loyalist literature addresses

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<sup>43</sup> See for example, Samuel Smiles *Self-Help* (1859), which became known as “the bible of mid-Victorian liberalism” (Shipside 2009).

the racial-colonial debacle that occurred when the supposedly civilized White British colonists of North America went for each other's throats in the revolutionary and 1812 wars and tries to assimilate it to the formula story of the nation as a convincingly natural domestic unit" (47). To be sure, Moodie's engagement with Loyalist discourse is more nuanced than the overarching narrative that Coleman provides; despite his own Loyalist position, he takes an objective stance in "Canadian Sketches," examining how the government's favoring of United Empire Loyalists post-American Revolution and Upper Canadian rebellion, led to problematic instances of land speculation, thus "retard[ing] the natural progression of the country" (393). Still, much rhetorical work is accomplished in Moodie's separating of the "colonist" from other iterations of the British "farmer"; Moodie reminds his readers of what is to be superseded in his narrative of national progression: "the fratricidal disturbance which explains the nation's origin and which forms the central action of the plot in these narratives must be forgotten or sublimated as we turn our attention, late in the story, to the domestic romance of the nation's future" (Coleman, 48). Moodie's critique of past decisions of British government arrives at a moment when the supremacy of this liberal mode of governance has been well established, and thus his bolstering of the Canadian colonist against a previously deficient British government, and less industrious British farmer, works to shore up a future-oriented, peaceable, and liberal proto-nation state.

Moodie's fracturing of Canadian colonists from British countrymen ensures that his narrative is forever forward looking—it separates well governed individuals from "land jobbers" and speculators, poor governance practices from "responsible government" (397) reformers and "annexationists" from Loyalists (410). Most

significantly for my consideration of how these logics become projected onto the Indigenous waterways of Upper Canada is how the fraternal/fratricide allegory of the Loyalist brother, sustains the narrative of civilized development despite the nation's treatment of Indigenous peoples at various moments throughout this development. Coleman writes, "the emerging settler-invader nation needs to present the image of its citizenry as an undivided, peaceable community in order to substantiate the claim of civility that justifies the colonial displacement of the "barbarous" Indigenous people of North America" (47). In offering his forward-looking narrative of national progression, along with a sustained critique of past governmental inadequacies, Moodie contributes to the substantiation of policies such as the Gradual Civilization Act and other initiatives that sought Indigenous territories and the removal of pre-existing Indigenous relationships to land and waters undergoing rapid settlement. Under such logics of development, the Anishinaabeg, for example, could be gradually civilized, just as the burgeoning nation's own settlers and systems of governance had achieved peaceable order over time.

While, as I have mentioned, Moodie offers essentially no concern for the region's Indigenous inhabitants in his narrative of progression, his rhetoric of the forward-looking, upright individual, gradually ordering the landscape and its governance structures in the image of self-improvement and civility, is liberalism at work—it is the voicing of the same liberal logics that attempt to incorporate Indigenous peoples through "civilizing" practices, and most importantly, which re-ordered Indigenous lands and waters through their narratives of perpetual improvement. Quoting Lisa Lowe, Jodi Byrd reminds us that "In fact, liberal humanism . . . depends upon the "economy of affirmation and

forgetting” not just of particular streams of human history, but of the loss of their geographies, histories, and subjectivities” (2011, xxiv). Where Traill affirms Indigenous knowledge toward her own ends, Moodie’s writing-out of the Anishinaabeg within his narrative of liberal self-improving progression actively forgets their geographies, histories, and subjectivities, as he offers a portrait of an ever-advancing settler nation that does not meaningfully engage them.

Before turning to the role of water within “Canadian Sketches,” it is important to acknowledge that Moodie’s primary means of narrativizing the liberal order of Upper Canada occurs through his concern with land. Moodie firmly situates the burgeoning prosperous nation, one that is now successfully settled and rapidly developing, in relation to the Lockean labour theory of property. Where Locke suggested in his “Second Treatise on Civil Government” that property is obtained through labour upon natural resources, Moodie attributes the newly emerging indomitable Canadian spirit to the rendering of unruly space as a plan, as a system of “common roads, rail-roads, or canals,” (386). He is almost obsessively concerned with the conversion of land into productive means of development throughout his narrative; whether through his explanation of the laying of plank roads, including their cost, quality, and means of installment (407), his consideration of the burgeoning lumber industry (399), or the reworking of Canada’s unruly waters into canals and shipping routes (396-397), Moodie traces the increase in population growth of the cities and towns of Upper Canada, and their relation to the “the encouraging prospect of a continual increase in the value of fixed property” (388-389).

Notably, the singular mention of the Mississauga Anishinaabe, for whom, as Moodie notes, “Belleville was originally a spot reserved,” serves only to outline how far

the settlement has since come, as it “began to grow in importance as the fine country in its neighbourhood was cleared and tendered productive” (399); the Anishinaabeg here are attributed as much value as old “frame farmhouses,” both of “which were removed to make room for more substantial buildings” (399). Moodie’s rhetoric voices “[t]he experienced materiality of colonialism,” “grounded,” as Cole Harris notes, “in dispossessions and repossessions of land” (2004, 170); Moodie’s ordering of the landscape works as a spatial strategy to manage certain populations (the Indigenous) while making room for others (the British). His text allows us to see this spatial strategy in action, as he treats the Mississauga Anishinaabe as a problem to be rhetorically managed, whether through his deliberate writing of them out of the landscape, or through his implicit discourse of civilization versus savagery (see Laroque 1983, 86-91).

Moodie’s mobilization of settler colonial techniques of land management and organization thus “conceptualize unfamiliar space in Eurocentric terms, situating it within a culture of vision, measurement, and management” (Harris 2004, 175). Moodie writes,

It will suffice to observe, that the country is generally much varied in its surface, and beautiful, and the soil is generally excellent. Within the last ten or twelve years the whole country has been studded with good substantial stone or brick houses, or good white painted frame houses, even for thirty miles back, and the farms are well fenced and cultivated, showing undeniable signs of comfort and independence. (408)

His rhetoric of colonial progression hinges on both the sacred right to private property attributed to the Canadian settler, and a binary logic that excludes existing forms of land tenure over the lands being colonized. Mackey explains the operation of these logics, writing, “Such imagined self-order and security is only possible through constructing binaries: the settled order of sedentarist boundaries and fences, versus the chaos and unsettled mobility of a “state of nature” that is believed to exist outside of those

boundaries” (2016, 33). Property is bestowed upon the land only through the hand of the settler, as, under Locke’s theory of property and the liberal order it gives power to, the settler himself possesses property from within. Building on McKay’s framework, Constant and Ducharme elaborate, explaining that the liberal order “places special emphasis on the sacred and unalienable liberal right to property, beginning immediately with the possession of the self. The right to property trumps all other rights within liberal philosophy because property is interpreted as the “the precondition of a liberal’s identity”” (2010, 7).

Moodie’s narrative of the self-assured progressing settler colony then, is upheld by liberal logics of race-making, the rhetoric of self-improvement/responsible self-government, and spatializing/territorializing strategies of possession and dispossession, all of which are premised on the relationship between the settler and the land, which settlers inevitably possess as their sacred right to private property. Insofar as this right exists even before their arrival on Turtle Island and may be transported with them, it can be established with justification in the lands of the Mississauga Anishinaabe and other Indigenous nations (See Veracini 2010). While Moodie’s rhetoric is powerful, illustrating, and textually performing the various ways by which the logics of liberalism order the territory of the Mississauga Anishinaabe during an aggressive period of Canadian settlement, I now want to pursue the question of how he extends these logics to the waters of Upper Canada, and how the waters resist the settler liberal spatializing practices of an aggressive and ongoing liberal order.

*Productive and Unproductive Waters in Moodie’s Liberal Order*

If not for the previous inadequacies of government and the “curse” of land speculation, which “retarded improvements in Canada,” the country would have even more quickly entered into what Moodie identifies as its current moment of prosperity (394). But there is something else that throws the assured progression of the emergent Canadian nation into question for Moodie. Initially celebrating Canada’s expansive waterways, Moodie writes, “It is a remarkable fact, that hardly a lot of land containing two hundred acres, in British America, can be found without an abundant supply of water at all seasons of the year” (385). Further still, the expansive water system creates the conditions for internal navigation: “A chain of river navigation and navigable inland seas, which, with the canals recently constructed, gives the countries bordering on them all the advantages of an extended sea-coast, with a greatly diminished risk of loss from shipwreck!” (385). The development of Canada’s lakes and rivers into productive shipping routes and manageable canals are framed through the same organizing logics of a settler liberal order as the land that Moodie centers as the primary site of settler development. He emphasizes “the recent completion of the works on the St. Lawrence, and the enlargement of the Welland Canal, connecting Lakes Erie and Ontario, . . . with the additional advantage of the whole colony being greatly benefited by the commerce of the United States, in addition to her own” (396-397). For Moodie, water means internal navigation, the transportation of goods from land to markets, and perhaps most significantly, the opening up of settlement on lands “which would otherwise for many years have remained a wilderness, unfit for the habitation of man” (396). Moodie’s rhetoric of liberal progression is extended onto the waterways of Upper Canada, which are actively being remade into canals, lumber transit ways, and the arteries of settlement.

Moodie at once conceptualizes water in terms of propertization—how it fosters the conditions for turning land into property, for its function as a utility for shipment and settlement, and rhetorically, as a pivotal element ensuring settler futurity within the Trent River watershed.

Moodie’s rhetoric however, breaks down in a number moments where he is unable to reckon with water’s resistance to being contained or managed. His celebration of the organized settlements of Upper Canada is thrown into disarray by an element of the landscape that cannot always undergo the same ordering and cultivation that structures settler logics of possession. Where Canada’s intricate waterways provide the means for progressive settlement, they also challenge organized development. Moodie’s previous celebration of Canada’s waters wavers as he casts their effects on settlement in a different light:

The mighty rivers and lakes of Canada, though productive of boundless prosperity, operated in the first period of its settlement, most unfavorably on the growth of the colony, by throwing open for settlement an extensive inland coast, at that time unconnected with the ocean by means of canals. Hence numerous detached, feeble, and unprogressive settlements came into existence, where the new settlers had to struggle for years with the most disheartening difficulties. (397)

Here, Moodie reveals how Canada’s vast systems of lakes and rivers at once create the conditions for settlement, with its “navigable inland seas,” while also fostering the development of “detached, feeble, and unprogressive settlements” almost for the very same reasons. The extensive inland coast is both the means and impediment to stable settlement. For Moodie, the immensity and unorganized nature of water systems in the developing nation prevent substantial settlements in places like “the beautiful Bay of Quinté,” with its location away from “the general route of steamers, and too near the

lower end of lake navigation” (398). Despite the Bay’s noted beauty, its location is a hindrance to the logics of settlement Moodie incites; nature that cannot facilitate settlement, and most importantly, capital development, may be beautiful, but is ultimately disorderly, unproductive, and not of value to Moodie’s narrative of progression. Moodie writes,

The shores of the Bay Quinté were originally principally occupied by U.E. loyalists and retired officers, who had served during the late war with the United States, but the emigration from Europe has chiefly consisted of the poorest class of Irish Catholics, and of Protestants from the North of Ireland. . . . Comparatively few possessing any considerable amount of capital have found their way here, as the country town, Belleville, is not in the line of the summer travel on the lakes. (398)

The logics of settlement, those which hinge on the accumulation of a “considerable amount of capital,” are thus undercut in regions that water has rendered less traveled. Despite the Bay of Quinté possessing “the most fertile land on its shores, and scenery which exceeds in variety and picturesque beauty that of any part of Upper Canada,” its location is detached from the patterns of settlement through its relation to the very waters which indeed make it so picturesque (398). As such, the Bay of Quinté cannot achieve the same level of organized progression as other, more navigable settlements in Upper Canada.

Moodie’s sentiments toward the waters are ambivalent at best. If they cannot be contained or incorporated into the logics of settlement identified above, they tend to “work in a manner rather to retard than to accelerate improvements” (396). Water is productive and creates prosperity when it can be directed or contained. When it throws the question of settlement open, when the geography that it is of course an integral part of, is complicated by its presence, and made incapable for cultivation, it is cast out of the

social order of settlement. Moodie's stance on the necessarily organized logic of settlement is best captured as he writes, "But for the steam-engine, canals, and railroads, North America would have remained for ages a howling wilderness of endless forests, and instead of the busy hum of men, and the sound of the mill and steam-engine, we should have heard nothing but 'The melancholy roar of unfrequented floods.'"

Quoting English poet and translator, William Sotheby, Moodie situates water—doing what it does without human intervention—as outside of the logics of settlement. If not for its containment or direction through canals, its use in steam engines, and its productive capacity in relation to mills, water becomes an impediment to Moodie's fixed narrative of progression. So for Moodie, water is simultaneously a "source of prosperity" (402) and a catalyst for "unproductive settlement" (397)—those settlements which fail to generate the capital and population growth in line with his rhetoric of an ever-progressing nation. As such, Moodie attempts to contain water, to organize and cultivate it within a settler liberal order. Water that cannot be contained, that escapes the liberal logics of settlement, is eliminated from this social order, lamented for its hindrance of settlement, and returned in a sense, to a "state of nature," subject once again to the practices of a dominant settler colonialism.

Moodie's rhetoric of inclusion and exclusion, where water is that which can be simultaneously productive and unproductive, marks water as an ongoing site of settler colonialism that resists terminal containment. It emphasizes in Wolfe's terms, how settler colonialism is a process, an ongoing structure, and not an event. Moodie's rhetoric shows how water operates as a perpetual site of dominant forms of settler liberal governance through its ongoing and cyclical attempted incorporation and exclusion from the settler

liberal order. Hobbes' state of nature theory conceptualizes the state of nature as "a pre-political, chaotic and violent environment" that demands the establishment of legitimate governance (Mackey 2016, 48). Moodie's progressive narrative situates water as that which endlessly demands this establishment. While contained and productive waters are celebrated, other waters and their watery ecosystems are inconveniences or false lures. This process is evident in the indifference shown for the waters that support the rice harvesting practices of the Anishinaabe—how prior to European settlement, these waters were worlded into relationships with the Mississauga Anishinaabe who engaged the waters as agential and in reciprocal relations (Simpson 2011, 94); Traill's narrative of exclusion of rice harvesting from the settler liberal economy, and the subsequent flooding of rice beds as a result of the construction of the Trent-Severn Waterway illustrate how certain waters and the practices that they support are treated as superfluous to the settler liberal order. Notably, as Eva Mackey reminds us, the state of nature theory extends to the "'natural' state that Indigenous peoples were seen to embody" (48), thus rendering their practices and the waters that uphold them as always already primed for the establishment of settler colonial liberal governance structures.

Moodie articulates this process of inclusion and exclusion as he both champions the progress of industry through the construction of an abundance of mills in Upper Canada, and also notes how "before so many mills were erected, the fish swarmed in incredible numbers in all our rivers and lakes" (405). While Moodie's brief acknowledgment of the effects of settlement on the region's fish populations offers some lamentation of the necessary sacrifices required for settlement and development, the cursory quality of his remarks amidst his rhetoric which predominantly fails to account

for settlement's negative effects on the environment, serves to highlight how Moodie's voicing of settler progression is fundamentally premised on the "belief in the epistemological and ontological primacy of the category 'individual'" (McKay, 623). Moodie textually performs a "liberal vision" which "saw individuals as separate from, and acting upon, the natural world" (632). Where water flows in unruly ways, the loss of fish is secondary to the desire for more mills, more ships in the harbour, more development, more navigation, more containment, more property, more settler individuals establishing a liberal order within the waters of Turtle Island.

But as Moodie himself makes clear, water can only undergo so much cultivation and containment. Settler ingenuity, the logics of possession that structure settlement and create the conditions for liberal governance, along with the inalienable right to turn land and water into property are challenged by water's disorderly presence. Water emphasizes, in Veronica Strang's words, that "human-environmental engagements are composed of shifting and mutually constitutive processes, rather than the more static and fixed relations suggested by notions of culture or civilization, which depend heavily on images of "structure," artifacts, and built urbanity" (2013, 186). Water's materiality is only significant for Moodie in its relation to the settler liberal ordering practices that emphasize particular forms of settler land tenure and governance. Water within the structures of settler colonial ordering is thus only useful in so far as it can be mobilized toward development of the progressing settler state. When water escapes these structures, when it is outside of the settler liberal order, it throws open not only the settlement of Upper Canada, but the fixity of settler identity and settler logics of possession.

At hardly twenty-six pages, with its only cursory comments about water, and the almost non-acknowledgment of Indigenous presence, J.W.D Moodie's "Canadian Sketches" may seem an odd choice for a dissertation concerned with Indigenous rights and water. And yet through his self-assured narrative of fixed settlement and progress, Moodie captures the subjectification and outward projection—almost advertising—of a settler liberal order, aggressively being established with the aim to reorganize the so-called new world in the image of settler colonial liberal governance structures and systems of land tenure premised on the individual and his sacred right to private property. His short narrative embodies a 19<sup>th</sup> century settler liberalism that can only comprehend water in its relations to these settler structures of fixed property and progression. His inability to grapple with the presence of water that escapes these logics sets the stage for understanding water's relation to Indigenous rights in Canada, as well as its potential to challenge fixed notions of settler possessive logics. Further, while Indigenous peoples are present only implicitly in Moodie's sketch, Avril Bell reminds us that, in a settler-colonial nation state like Canada, settlers and Indigenous peoples are intrinsically entwined. In order for settler identity to persist, Bell writes, "Either Indigenous peoples must disappear (literally or symbolically) or the two peoples must be merged—and in some versions these two are tantamount to the same thing" (2014, 7). Moodie offers an articulation of the settler imaginary where Indigenous peoples have literally been made to disappear, cast out of the developing social order in ways not dissimilar to unproductive waters, relegated to the wilderness, to a state of nature, and thus ready again and always for further processes of settler colonialism. Moodie's "Canadian Sketches" is a quintessential masculine settler text that distills a settler imaginary premised on logics of

entitlement and possession and the absolute disavowal of Indigenous peoples, communities, and societies and their presence on colonized lands. But this logic, and the rhetoric that supports it, is limited by the very elements that it attempts to fix and contain. As Moodie's text shows, however ambivalently, water upends certain settler logics of possession.

### **The Navigable Waters Protection Act and the Extensive Projection of Liberal Rule**

While the short works of Moodie and Traill that I draw from give the impression that public interest around water in the 19<sup>th</sup> century was limited solely to its productive capacity, these narratives occlude broader tensions between private rights and the so-called public interest. The Fisheries Act of 1868, for example, offers an important supplementation to Moodie's passing lamentation of the relationship between mills and the loss of fish. Taken together with 1870s legislation that prohibited the discharge of mill waste, including sawdust, into navigable waterways,<sup>44</sup> the Fisheries Act addressed both the "regulation of fishing and the protection of fisheries, with the latter goal achieved through such means as prohibitions on "prejudicial or deleterious substances" that could result in injuries to fishing grounds or river pollution" (Benidickson 2011, 2). Such acts and legislative measures are important reminders that broader public interests around public health and environmental protections may escape the rhetoric of someone like Moodie; however, Moodie also reminds us of the contexts through which these acts emerged. In his comprehensive review of the "Evolution of Canadian Water Law and

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<sup>44</sup> See for example, An Act for the Better Protection of Navigable Streams and Rivers, S.C. 1873, c.65, s.4.

Policy,” Jamie Benidickson explains how, “In part because the lumber industry contributed substantially to government revenues, officials typically equated the industry’s well-being with the public interest” (5). He continues,

With waterways viewed largely as highways in an economic system, hardly any consideration was given to the environmental or ecological implications of forest industry practices. Thus, overlooked and poorly understood, forest operations altered runoff patterns and in-stream flows, while river improvements that accommodated timber drives accelerated the scouring of riverbeds and shorelines. As bark, sunken logs and discarded slabs decomposed, these materials placed heavy demands on the oxygen supplies of inland waterways. (5)

So while Moodie’s narrative of the progressing settler nation may offer a subjective portrait of the establishment of a settler liberal order around land and water, bracketing, through much of his rhetoric, the broader public interest dimensions that may complicate his self-assured narrative, Benidickson shows that indeed, the “limited scope of those public interests is striking” (Benidickson, 5).

Following McKay’s concern with the liberal ordering present in both the “private sphere”— “the farmer’s fence” and “National Policy”—“Macdonald’s tariff” (683), in the section that follows, I turn from the subjective articulations of the liberal order of early settler writers, to the national policy that further materialized these liberal possessive logics. Specifically, I follow recent debates regarding the Navigation Protection Act (NPA)—formally the Navigable Waters Protection Act (NWPA)— back in time to its establishment in the late 19<sup>th</sup> century, to examine the ways its creation was deeply implicated in the liberal ordering of Indigenous territory; further, despite its contemporary perception as legislation to support environmental protections, and as a tool that may help protect Indigenous waterways, I show how without substantial changes, it remains a liberal tool that works to undermine the inherent rights of

Indigenous peoples. Further, I conclude this chapter on policy, rather than literature, because the treatment of water in the Navigable Waters Protection Act and its almost 150-year history is one that expresses both 19<sup>th</sup> century liberal logics, and also leads us toward the 20<sup>th</sup> and 21<sup>st</sup> century late-liberal manifestation of a settler colonial politics of recognition that will be further explored in chapter two. The NWPA represents real attempts to care for waterways in this territory, but always within the confines of settler logics of possession where water is, at best, a means of enacting and ensuring settler futurity—that is the means through which the settler colonial project may be imagined to proliferate—and at worst, the means of unabated capital accumulation. The NWPA captures the colonial rhetoric present in Moodie and Traill’s writing, and its earliest forms and subsequent amendments, along with their eventual backlash, also articulates the kind of complex liberalism present in the contemporary wild rice dispute at Pigeon Lake. Such policy emphasizes the various ways that water and environment is engaged on behalf of the settler Canadian state, and how such engagements become incorporated into the settler subjectivities that continue to shape and organize relationships between Indigenous peoples, settler Canadians, and Indigenous rights issues. While national public policy often expresses a tension between the enactment of state power, its modes of governance and management, and competing public interests that view policy as an important tool within a democratic society, I argue that the Navigable Waters Protection Act, from its earliest iterations to its contemporary interpretations, is representative of the liberal ordering of Indigenous waterways on Turtle Island.

*The (Dis)ordering of the Navigation Protection Act*

More than a century of government legislation has fostered abstracting relationships between Canadians and the environment. Moodie voices the logics of much of this legislation, as it emerged during the 19<sup>th</sup> century, and within the context of an aggressively expanding nation state. Early iterations of government legislation were created under the necessity of establishing industry in the emerging settler state, as well as upholding the integral category of the individual and his right to private property and these logics of a liberal order remain fundamental to key pieces of Canadian legislation often interpreted as means of environmental protection. The recent legislative measures enacted under the former Conservative federal government's omnibus Bill C-45 (2012) and, specifically the changes made to the Navigable Waters Protection Act, which was renamed as the Navigation Protection Act, are illustrative of the liberal territorializing practices that, through their establishment in 19<sup>th</sup> century Upper Canada, have shaped the waterways across the northern part of Turtle Island into our contemporary moment.

The NWPA, first enacted in 1882, has been interpreted as Canada's first ever piece of environmental legislation.<sup>45</sup> While the primary purpose of the law was to protect the public's right<sup>46</sup> to navigation within Canadian waters, the law has been understood as

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<sup>45</sup> The genesis of what would come to constitute the Act must be followed through both Provincial and Federal Legislation. In 1881, the Premier of Ontario passed the River and Streams Act to settle a lumber dispute along the Mississippi River. This Act would be disallowed three times by the Federal Government, citing concerns over property rights. In order to maintain its own jurisdictional authority over Canadian waterways, the Federal government passed the 1882 act referred to as "An Act respecting Bridges over the navigable waters, constructed under the authority of Provincial Acts" (*Revised Statutes of Canada 1882*). In 1883, the act's breadth was expanded to cover "bridges, booms, dams, causeways (*Revised Statutes of Canada 1883*), and again in 1886, to cover "wharves, docks, piers, and other structures (*Revised Statutes 1886*). Within the publication of the *Revised Statutes of Canada, 1886*, it became known as "An Act respecting certain works constructed in or over Navigable Waters." Eventually the Act would be commonly known as the Navigable Waters Protection Act, as administered by the Department of Public Works and later Transport Canada. For more information see Caldwell and another v McLaren (Canada) [1884] UKPC 21 (7 April 1884); An Act Respecting the Public Interest in Rivers, Streams, and Creeks, 1881; Revised Statutes of Canada 1886.

<sup>46</sup> There exists here an important question regarding the limitations of what and whose public the original act referred to. Would the act have worked in conjunction with the Indian Act? Would restrictions within

the single most integral piece of legislation protecting Canada's lakes and rivers from obstruction and pollution related to the activities of industry (Kirchhoff, Gardner and Tsuji).<sup>47</sup> While the definition of what constituted a "navigable water" was relatively ambiguous within the act, the Supreme Court of Canada adopted the "floating canoe" test in 1906, suggesting that any water in which one could float a canoe was within the scope of the act (Attorney General). Such a broad definition of navigable protected waters, one relied upon by and reiterated through various government programs<sup>48</sup> and Superior Court decisions,<sup>49</sup> gestures toward a particular kind of relationship with water throughout Canada. A conservative estimate would suggest that this definition of navigable waters pertained to at least 31, 752 lakes larger than three square kilometers (*Atlas of Canada*). When smaller lakes and rivers are taken into account, the "floating canoe" interpretation of the Navigable Waters Protection Act would cover bodies of water estimated in the millions.<sup>50</sup> Indeed, the conception of waters requiring protection under the previous

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the Indian Act have limited Indigenous people's protections under the Act? Likely, the question of Indigenous peoples rights to navigate waterways in Canada was not even a consideration throughout the establishment and many amendments of the act. Such questions further emphasize the limitation of settler fixity in relation to land, water, and settler relations with Indigenous peoples.

<sup>47</sup> In *Friends of the Oldman River Society v. Canada (Minister of Transport)* (1992) it was ruled that the Navigable Waters Protection Act "has a more expansive environmental dimension, given the common law context in which it was enacted. The common law proscribed obstructions that interfered with the paramount right of public navigation. Several of the "works" referred to in the Act do not in any way improve navigation. Bridges do not assist navigation, nor do many dams. Thus, in deciding whether a work of that nature is to be permitted, the Minister would almost surely have to weigh the advantages and disadvantages resulting from the interference with navigation. This could involve environmental concerns such as the destruction to fisheries. . ." (*Friends of the Oldman River Society v. Canada (Minister of Transport)* (1992).

<sup>48</sup> See for example Fisheries and Oceans Canada, "Application for or Modification to an Aquaculture Site in a Marine Environment," July 2010. <http://www.qc.dfo-mpo.gc.ca/aquaculture/documents/GuideCQOct09finaleng.pdf>

<sup>49</sup> See for example *Simpson v. Ontario* (Natural Resources) (2011)

<sup>50</sup> There are no official numbers as to just how many lakes and rivers exist throughout Canada. Given the breadth of the floating canoe test, this would also include smaller streams, or even drainage ditches, and thus to suggest these number in the millions, is perhaps even a conservative estimate itself.

Navigable Waters Protection Act was immense, illustrating the significance of water and its navigation for Canada's development and sustainability as a nation.

While the breadth of the Act evolved through the 20<sup>th</sup> century in relation to public interest in its capacity for environmental protections, it never ceased being, first and foremost, an act concerned with navigation protections. With the ushering in of the Navigation Protection Act under Bill C-45, the Navigable Water Protection Act was renamed and amended to include a schedule that lists only those navigable waters for which regulatory approval is required. The protections of the Act now pertain only to "the busiest navigable waters in Canada," which is limited to 97 lakes, 62 rivers, and 3 oceans (Government of Canada 2012a). The first changes to the act under Stephen Harper's Conservative party were made in 2009 to reduce protections for "minor works and waters" (Government of Canada 2009). In a press release in May of 2009, then Transport Minister, John Baird, announced, "Our government, led by Prime Minister Stephen Harper, is cutting red tape to address today's economic needs and reflect current realities"; he continued, "The current rules treat a nearly dry stream the same way as the Northumberland Strait. That just doesn't make sense" (Government of Canada 2009). The 2009 amendment signaled a shift in the meaning of "protection" under the act, from one grounded in wide reaching, albeit ambiguous, environmental protections, to a focus on the exclusive protection of economic growth and navigation safety.<sup>51</sup> Classes of minor works and waters that "have no significant impact to navigation, such as irrigation and

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<sup>51</sup> I do not intend to suggest that the former iteration of the Act was explicitly grounded in environmental protections. It was indeed an act based on the public's right to navigation. However, its immense coverage of all of the lakes and rivers in Canada, as well as Superior Court decision such as *Friends of the Oldman River Society v. Canada* (1992) mentioned in footnote above, implicitly and explicitly situate the former *Navigable Waters Protection Act* at least in part, within the realm of environmental protections. As I will show, this is in fact, not entirely accurate.

drainage ditches” would streamline the approval process for natural resource development under the 2009 amendment (Government of Canada 2009). Baird’s statements, which would set the stage for the larger amendments of the Act under Bill C-45, encapsulate the Harper government’s approach to water and environmental legislation as one rooted almost exclusively in revenue generation and the facilitation of resource development. Such an approach appeared to sacrifice Canada’s waterways for unobstructed access to capital accumulation.

As part of the “Economic Action Plan 2012,” the Harper government’s plan for “Responsible Resource Development” sought to further streamline the review process for major economic projects (Government of Canada 2012b). Bill C-45, also referred to as the Jobs and Growth Act 2012, can be understood as the culmination of this focus on the rights of industry, and more specifically, the right to resource extraction. Where the changes made to the Navigable Waters Protection Act under the bill have been widely criticized by opposition parties, environmental groups, and First Nations, the Conservative government insisted that the NWPA was never intended as protection for the environment, but rather, to ensure that waterways were safe for navigation (Paris, 2012). The presumption here, however, is that navigation on waterways is somehow separate from the environment of the waterways themselves. Politics and culture have been instrumentally bifurcated from the environment through these legislative measures. Strang suggests that, “one of the key reasons for separating culture from nature is to provide an illusion of fixity and permanence,” and thus we see how the removal of environmental factors from initiatives so rooted in “economic action” and resource development offers a sense of control within a fixed landscape of material possession and

capital accumulation (Strang 2013, 193). Notably, as we learned through the writing of Traill, the notion of “the economy” here is also never one that includes local Indigenous economies.

To be sure, as Moodie’s rhetoric also made clear, water never quite offers the kind of fixity that such capitalist relations desire. While the Conservative government’s omnibus bills have been controversial due to their length and scope subverting legislative process, making it near impossible to fully analyze and understand the implications of their legislative measures until they become law, Bill C-45 was seen to be particularly nefarious amongst First Nations groups given the array of changes made to the Indian Act, the Navigable Waters Protection Act, the Fisheries Act, and the Environmental Assessment Act (Kino-nda-niimi Collective 2014, 21; Palmater 2014, 38). The changes were seen to further erode Indigenous rights and to neglect the “duty to consult” mandate which outlines the federal government’s obligation to consult First Nations on any matters affecting Aboriginal treaty rights (Visconti 2013). Indigenous response to the omnibus bill was swift, inciting one of the largest national, and even global Indigenous movements of protest and resistance through what came to be known as Idle No More. The movement began with a teach-in organized by Sylvia McAdams, Jess Gordon, Nina Wilson, and Sheelah Mclean in Saskatchewan with a focus on raising concerns regarding the removal of protections from the environment (specifically water and fish habitats), the improper “leasing” of First Nations’ territories, and the lack of consultation with those people most affected by the implications of the bill (The Kino-nda-niimi Collective 2014). While Idle No More would come to encapsulate an array of issues related to “long-standing abusive patterns of successive Canadian governments in their treatment of

Indigenous peoples,” the movement consistently remained focused on the environment as part of a larger strategy toward Indigenous rights, articulating well established Indigenous relationships to land and water through round dances, blockades, marches, public talks, hunger strikes, and numerous other demonstrative practices (The Kino-nda-niimi Collective 2014, 22). Indigenous Nations across the country asserted their opposition to Bill C-45, while demanding respect and recognition of their own socio-relational environmental ethics and inherent rights.

Conversely, what kind of social relations can the amended Navigation Protection Act be understood to inhabit? Arguably, rigid economic relations to resources have supplanted any semblance of a social relation to the environment, or the water more specifically. Bill C-45 is concerned with economic flows, with the fluidity of capital abstracted from ideas of social or ecological flows. The Navigation Protection Act shores up the nature/culture binary so as to always already have ecology separated from politics. “This concept of culture,” writes Strang, “may tend, fundamentally, toward a human-centered (and male-centered) ideology of control in which the world is surveyed as an array of resources and materials for constructing artifacts that fix human agency in time – rather than consisting of flows in which humans participate” (2013, 193). Even as water necessarily remains fluid, flowing between culture(s), environment, and politics, social relations are effectively defined and fixed under such legislation. We witness the “refiguring of nature in terms of ‘services’ and ‘natural capital’” under policies that can best be described as the neoliberalization of nature (Braun 2014, 2). Bruce Braun suggests that this is a moment when “capital presents itself as coextensive with social, political and ecological life,” whereas capital is, in fact, “not the source of life, but

parasitic to it” (1). The Navigation Protection Act under Bill C-45 resists an approach to water that includes or accounts for a conception of the social grounded in the specificity of place and environment, suggesting instead, and not unlike Moodie’s own advertisement of settlement in Upper Canada, that it is solely conceptions of abstract exchange value under capitalist modes of production that shape our interactions with the environment and with each other.

### *A Continuum of Policies of Liberal Territorialization*

While the former Harper government’s environmental stance is no doubt problematic, we must resist an interpretation of the former Navigable Waters Protection Act as one which signaled an ideal national relationship with the environment. Indeed, extensive environmental damage had been done in the 130 plus years that the NWPA was in place. The construction of the Trent-Severn Waterway and its destruction of the Anishinaabeg’s rice beds, for example, occurred long before the amendments made under Bill C-45. The mercury poisoning of the Wabigoon River, referred to in *A Dream Like Mine*, and addressed in my next chapter, also occurred unabated for almost a decade, and half of a century before the amendments to Bill C-45 supposedly undercut the act’s environmental intent. To be sure, existing Indigenous rights policy in Canada, with all of its abstracting discursive approaches to the environment and people’s place within it, has developed despite, and separate from the encompassing protections of waterways outlined in the NWPA. The inherent rights, of Indigenous peoples, their integral relations to the lands and waters they inhabit, and the environmental destruction they are so often up against, have largely remained illegible despite and within Canadian efforts for

environmental protections. The various common law cases—the communal push to ensure that the NWPA included environmental protections over the past century—along with its extensive coverage do gesture toward, at the very least, a desire for a relation to water that considered its significance in a way that has since been foreclosed upon through the amended legislation of the Navigation Protection Act; however, the separation of people from the waters they inhabit, along with the foregrounding of water as an extension of property and as a utility (in this case as a means for transportation) perpetuated through the amended act was already well established in the former NWPA. From its very inception, the legislative measures put forth through the NWPA worked to emphasize the same liberal ordering practices discussed above.

To return to 19<sup>th</sup> century Upper Canada (which had since become Ontario under the Dominion of Canada) and to the genesis of the Navigable Waters Protection Act is to return to the unabashed establishment of the settler liberal order and its concern for the rights of private property holders. Indeed the federal act must be understood through its origins as that which resulted from a lumber dispute along the Mississippi River in Lanark County, near Ottawa, and the subsequent conflict over jurisdiction between provincial and federal governments. In the 1870s, a dispute erupted between the Lanark logging firms of Peter McLaren and Boyd Caldwell (see Caldwell and another v McLaren, 1884). McLaren had constructed log slides in the waters adjacent to his land near High Falls on the Mississippi River. With the slides otherwise obstructing the passage of his own lumber, Caldwell asserted it was his right to make use of McLaren's slides. McLaren sued Caldwell's firm in an attempt to stop passage of his timber through the log slides he had constructed (Green 2009). In support of Caldwell, Ontario Premier

Oliver Mowat passed the Rivers and Streams Act, 1881, which required the unobstructed passage of “logs, timbre, rafts, etc.” down all Ontario waterways. The Act was quickly disallowed by the federal government under Sir John A. Macdonald, who asserted that it infringed upon private property rights (Creighton 1998). The Act would be disallowed and re-enacted two more times before its solidification under the Rivers and Streams Act, 1884, with the federal government quickly asserting its own jurisdiction over Canadian waterways through the passing of the Revised Statutes, 1886 which came to be known as the Navigable Waters Protection Act (Creighton 1998).

While *Caldwell v McLaren* and the subsequent jurisdictional disputes between the federal and provincial governments have been characterized as a conflict between private property rights and the public good,<sup>52</sup> the disputes and eventual resolution more clearly illustrate the ways in which water needed to be conceptualized in the emergent nation state. The waters were ultimately conceived of as “highways in an economic system,” to draw again from Benidickson, and while this conception may have violated the absolute private property rights of the individual (via McLaren), it ensured the property rights of *individuals* and the rights of industry—to conceive of water both as an extension of one’s property rights, in that one may enhance or extend their property interests into the waters they are adjacent to so long as another’s property is not infringed upon, and also as a utility necessary for the propagation of capitalist industry in the progressing nation state. In this sense, the dispute simply clarified private property rights and ensured greater unobstructed access to the lakes and rivers adjacent to one’s property and in ways that supported the property rights of individuals who inevitably shared the passage of water.

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<sup>52</sup> See for example, McLaren 1881; Ontario Heritage Trust, “Rivers and Streams Act of 1884”

So in the Conservative government's assertion that the NWPA was never intended as protection to the environment, but rather, only in place to ensure that waterways were safe for navigation, we can see echoed the kind of rhetoric that this piece of environmental legislation was always meant to delineate—that is, that the Act is, first and foremost, about the settlers' right to navigation. And it is the presumed right to the navigation of Canada's waterways where the liberal territorializing of Indigenous waters is situated. While ensuing court cases sought to broaden the act's scope to focus on environmental protections, its primary function was always to make way for and protect the building of settler infrastructure on this land's waterways. Enshrined in such legislative measures, was settler-Canadians' right to navigation through the nation's vast water system and the development and settlement that would be propagated through such navigation. This kind of legislation is of course double-edged, at once ensuring order to the inevitable development of the settled waterways, while simultaneously ensuring that said waterways were indeed developed. What has remained constant within the NWPA is the ordering of a vast and unruly network of waterways that worked to centre the settler right to build on and move through these waterways.

While the initial act encompassed all waters one could float a canoe in, and this coverage could indeed be interpreted as having great potential for environmental protections, a critical interpretation is more closely aligned with the act's eventual progression and limitations. A floating canoe serves as an interesting, if not ironic test for waters covered under Canadian state policy. In his research on sovereignty claims made in the 19<sup>th</sup> century, Adam Gaudry challenges the 1870 transfer agreement between the Hudson's Bay Company and the Dominion of Canada which has commonly been read as

the origin of Canadian sovereignty in the North-West, and a major step in Canada's self-understanding as a nation from sea to sea. Gaudry writes,

Negotiated in London under British law, the transfer paved the way for Canada to populate the region with its settlers and to act as the territory's primary political authority. In exchange for transferring these rights, the Company was paid £300,000 and received a one-twentieth of the land of the "fertile belt" in this newly Canadian territory. All of this occurred without the involvement or consent of the Indigenous peoples who were still the numerical majority in the region. (2016, 46)

I highlight here just one instance of the logics of possession that lay claim to Indigenous lands as they were deeply entrenched in the waterways of Turtle Island—logics enacted by men in canoes, whose traversing of the vast water systems, whose powers were obtained through trade with Indigenous peoples, premised on Indigenous knowledge and understanding of the routes they travelled, is what allowed for these raw assertions over Indigenous territories. The NWPA, even in its earlier forms enacts protections in a manner that obscures Indigenous peoples' prior occupation and relation to the waters in question. Gaudry continues, "British and Canadian institutions mobilized a complex array of legal arguments to claim possession of huge expanses of territory they "discovered" but did not control" (46). The NWPA is one such legal argument that has always ensured settler ordering and control of space remained primary throughout the region's lands and waters.

In the introduction to his recent text *Capitalism and the Web of Life*, Jason W. Moore suggests that a conceptual binary between nature and society is fundamental to understanding capitalism and its role in environmental degradation. Moore argues that, "Society" and "Nature" are part of the problem, intellectually and politically; the binary Nature/Society is directly implicated in the colossal violence, inequality, and oppression

of the modern world; and that the view of Nature as external is a fundamental condition of capital accumulation. While Moore is certainly not the first thinker to highlight the implications of the Cartesian binary that would situate nature and society as two mutually exclusive categories—indeed, Indigenous theorists have long articulated the implications of such conceptions (see Todd 2016)—his intervention at the level of historical materialism lends itself to understanding the settler liberal ordering of water through abstracted policy such as the Navigable Waters Protection Act. In historical materialist terms, the NWPA produces space—that of the new nation’s waterways—in the image of its own relations of production (see Harris 2003; Harvey 2001; Lefebvre 1975). As such, the institution of the act reflects settlers’ social relationship to the landscape they inhabit, ensuring that their presupposed inalienable rights are what structure and order the landscape in congruence with the social relations of production brought with them from Europe. The settlers’ rights are separated out from and preempt any other relation to the environment, wherein water might be understood as possessing its own agency, or require relations premised on sustainability and reciprocity.

Through policy such as the Navigation Protection Act, space is produced in relation to the state’s claims to sovereignty and the settler’s right to private property. Where water cannot be treated as property—something owned or claimed—it becomes the means of establishing property, working as a “chain of river navigation and navigable inland seas” that make settlement possible (Moodie, 385). When water is fluid and unruly, as suggested by Moodie, settler relationships are fixed to it through policy that remains focused on the development of private property or infrastructure—what the act refers to as “works.” Water is conceptualized within the act only as that which is

navigable, as it defines “navigable waters” as “a canal and any other body of water created or altered as a result of the construction of any work” (Government of Canada 2014). The meaning of water cannot be reckoned with beyond its development—its fixing as private property and how this property is put to use for capitalist development—and as such, settler environmental policy does not possess the terms to conceptualize water’s materiality in ways outside of the abstracted confines of capitalist production and a settler liberal rights regime. Streams may dry or overflow, water may be endlessly connected through ditches and drainage systems, plains may be flooded, groundwater may become polluted, and the effects of pollution may be felt downstream in ways less obvious upstream; but through legislation like the NWPA/NPA, water is only protected in relation to its corresponding “works.”

As such, water as a complex system is denied meaning within the settler liberal order and once again becomes secondary to the right of settlement, development, and progress. This right to settlement, one that treats water within the social relations of production, ensures that neither the protection of the non-human environment, nor the Indigenous relations more closely aligned with the place-based specificity of the non-human environment, is ever the primary goal of such legislation. As development expands in relation to the flows and flux of the market, the waters that it attempts to order and manage are subjugated so that the settler’s right to water’s development can persist. Much as in Moodie’s rhetoric, water is ordered always in its relation to land, and when this is not possible, it is eliminated from the settler liberal order, removed from the ever shrinking and carefully selected schedule of navigable lakes and rivers. Further, also as in Moodie’s rhetoric, Indigenous peoples and their relationship to the land, waters, and the

development that the act manages and orders, are entirely absent within the NPA and its previous iterations. Subsumed into the “public” addressed by the act, or else cast out of the liberal order that it articulates, the act represents a narrowly Eurocentric approach to water and its stewardship. But more than simply articulating a limited vision of how to live with water within this territory, the NPA effectively colonizes alternative approaches to space and environment.

I do not intend to undercut the necessary environmental protections fought for and articulated through certain pieces of government legislation, nor do I wish to give a pass to the abhorrent neoliberal policies enacted under the previous Conservative government’s omnibus bills that would see the Canadian landscape sacrificed like never before. Further, the backlash sparked by the act’s amendment under Bill C-45 (the Jobs and Growth Act) was an important response from Indigenous peoples who have had their inherent rights and approaches to water stripped away time and again through government legislation. The current Liberal government’s commitment to revisit the amendments made to the NWPA under C-45 and with a consideration of its effects on Indigenous peoples, is important in its own right (see Government of Canada 2017). I would, however, like to stave off any conception of a settler liberal order that locates the act within a kind of progressive temporality—a timeline of Canadian policy that is ever-advancing in its progressiveness—wherein aggressive liberal policies premised on individual property rights are a thing of the past, and which make it impossible for us to understand the kinds of root causes that allow such policies to persist through more inclusive late-liberal manifestations. Indeed, the kind of late-liberal environmentalism I address in the next chapter is premised on the charge that we can *now* join hands with

Indigenous peoples in common struggle to protect the environment; we can *now*, at this moment when it affects us all, say no to the negative effects of the liberal order; however, understanding these processes as temporal, or as emergent must be viewed with critical skepticism. The implication is to suggest that only now has nature been disrupted, and that we are only now at a critical juncture of the such policies. A close analysis of some of Canada's most cherished environmental policy illustrates the ways in which a persistent process of liberal territorialization has worked in part through legislation to "protect," and continues to work to reorder Indigenous lands and water, and to delimit the meaning of Indigenous rights in the settler state.

### **Resisting a Settler Liberal Order**

As we have seen through the writing of Moodie and Traill, as well as through the legislative re-ordering of Indigenous waterways, a great deal of work is required to negate alternative relationships to the waters undergoing liberal territorialization. As McKay notes,

Compared with Amerindian societies, which saw humanity as positioned on a continuum in which animate and inanimate, human and animal, natural and supernatural were all interconnected - to the point that such contemporary categories themselves can only simplify the profoundly holistic Amerindian vision of the universe - the liberal vision saw individuals as separate from, and acting upon, the natural world. (631-632)

Leanne Simpson elaborates on the distinction between the Western, liberal, capitalist spatialization processes that separate humans from the natural environment, and the

philosophies and cultural practices of the “Michi Saagiig Nishnaabeg.”<sup>53</sup> Writing of her home territory along the Otonabee River, she explains how “Otonabee is an anglicized version of Odenabe—the river that beats like a heart” (2011, 94). She continues,

When I hear or read the word “Otonabee,” I think “Odenabe,” and I am immediately connected to a physical place within my territory and a space where my culture communicates a multi-layered and nuanced meaning that is largely unseen and unrecognized by non-Indigenous peoples. . . . I am connected to Nishnaabeg philosophy and our vast body of oral-storytelling. I am pulled into my Michi Saagiig Nishnaabeg lands, and the beating heart river that runs through it. . . . Nishnaabemowin seamlessly joins my body to the body of my first mother; it links my beating heart to the beating heart that flows through my city. (95)

Simpson articulates here the integral connections between the philosophies of her people, the central role of language—Nishnaabemowin, her entire consciousness and embodiment as a Michi Saagiig woman, and the waters within her territory. In this formulation, there is no acting upon the natural world in a way that can be disconnected from one’s self, culture, and presence within that natural environment. Simpson’s sentiments here should remind us of the words I opened this chapter with: “Anishinaabe manoomin inaakonigewin gosha” — that wild rice is Anishinaabe law. These words express the complexity of the rice harvesting practices of the Anishinaabeg that are at once linguistically, cultural, and legally integral to the meaning of Anishinaabe nationhood. They are the practices that resist the liberal territorialization of the Anishinaabeg’s waterways.

I close this chapter then, by returning to the waters that comprise what is now the Trent-Severn Waterway. In Simpson’s 2014 collection *Islands of Decolonial Love*, her short story, “nogojiwanong,” which translates to Peterborough, begins with an address:

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<sup>53</sup> This is the Anishnaabeg spelling of “Mississauga Anishnaabeg” specific to Simpson’s community dialect.

it is with great regret that we are writing on behalf of the michi saagiig anishnaabeg to inform you that you will not be permitted to build your lift locks, canals, and hydro dams here because it is the place where we come to sit and talk with our aanikoobijiganag [ancestors]. . . . because these are the rivers we use to travel from chi'nibiish [Lake Ontario] to waasegamaa [Georgian Bay]. these routes are vital to the health and well-being of our relatives, pimiziwag [eels] and maajaamegosag [salmon]. . . . because of the damage it will cause our sugar bushes and minomiin beds, and our relatives the ducks and geese that depend on those beds for food. (2013, 113-114)

Her address is signed “the 21<sup>st</sup> day of june, eighteen hundred and thirty,” as it preempts the development of the Trent-Severn Waterway and asserts in no uncertain terms, the position of the Mississauga Nishnaabeg in relation to the settlement of their territories. She juxtaposes this address with two contemporary narratives of the destruction of the Peterborough lift locks. One, a brief admittance from an unnamed narrator, stating, “yeah, it was me. i blew the fucking lift lock up in downtown peterborough” (116). The second longer narrative, tells the story of aanjibines, a Thunderbird, who seeks the help of mishibizhiw, an underwater lynx, in destroying the lift lock by forcibly sucking it out of place and thus returning health to the Mississauga, while returning the watershed and its watery ecosystem to its natural state. In a 2015 keynote address, Jennifer Henderson explains how Simpson’s paradoxical narrative structure punctures the solidification of what she calls “settler space-time,” and its narrative of rational progression:

Blowing up the lift lock is a gesture of impatience but also, paradoxically, of profound patience. It is both, at the same time. It is impatient for change in the sense that it is a refusal of further negotiation with the settler “neighbours” in the story. It is *patient* in the sense that the action is Simpson’s *metaphor* for the long and difficult work of *unlocking* and *unblocking*: for creating those “islands” that the title of Simpson’s collection refers to. The suggestion is that it is enough to begin with the re-creation of pockets—heterotopias—of lived Nishnaabeg culture; to insert within settler space-time “islands” of “presence.” (2015a, n.p.)

Simpson’s multi-layered, multi-temporal narrative situates Anishinaabeg resistance to the liberal ordering of their territory both forward and backward in time, and amongst

human and non-human actors. Her story ensures we understand that the Anishinaabeg were never silent in the re-ordering of their lands, waters, and ways of life, and that the assertion of Anishinaabe legal orders—those entrenched within Anishinaabe philosophy, language, storytelling, and cultural practice—persists despite the historical and contemporary subjectifications and projections of a settler liberal order. She illustrates the necessity of both understanding the history of the establishment a liberal order and an ongoing history of Indigenous resistance to it.

Simpson's short story, and her comments on the Otonabee/Odenabe as the beating heart river, in conjunction with the assertion that wild rice is Anishinaabe law, work to express a radically different ontological purview of the Trent River Watershed than that aggressively established through a settler liberal order. Likewise, the ongoing wild rice dispute at Pigeon Lake illustrates the discursive limits of Indigenous rights grounded in Western private property regimes and the ontological certainty they presuppose. Tracing a history of the establishment of a settler liberal order in the waters of the Anishinaabeg and other Indigenous nations helps unmoor this ontological certainty, as it exposes the work required for its establishment, as well as the worldviews, practices, peoples, and environmental contexts that it can never quite contain.

This chapter has offered a partial history of this settler liberal order through the subjective life-writing of prominent Canadian settlers within the Trent-Severn Waterway, as well as through an important piece of Canadian legislation, which echoed and projected these intensive subjectifications, and which materially reshaped waterways across the settler nation state. Further, my aim has been to demonstrate how Moodie and Traill can and must be read in relation to their Indigenous neighbours whom their

settlement and discursive constructions worked to displace. Following writers like Simpson, this history has looked both forward and backward in order to understand how the settler liberal order exists on a continuum that historically delimited the meaning of Indigenous rights, and which continues to occlude their legibility. While I have offered some brief discussion on the ways that Indigenous peoples, particularly the Mississauga Anishinaabe, have resisted and continue to resist the ontological certainty of a settler liberal order, and while more sustained analysis of Indigenous resistance will be offered in chapter three, a fuller understanding of liberalism's complex manifestations in relation to Indigenous rights is required.

In my next chapter, I examine the co-optation of Indigenous resistance within the context of recognition-based politics and a seemingly progressive liberal environmentalism—what Povinelli calls late-liberalism. Where Moodie ignores Indigenous presence, Traill recognizes and coopts Indigenous knowledge in ways that actively undercuts and negates the political power of the Mississauga Anishinaabe. While Traill is constrained by her 19<sup>th</sup> century subject position as a settler woman, and most clearly illustrates an important function of the subjectification of a settler liberal order, her mobilization of Indigenous knowledge and her recognition-based engagement with the Anishinaabe anticipates the operation of late liberal politics that emerge most prominently in the latter half of the 20<sup>th</sup> century. Moving from the 19<sup>th</sup> century, to the second half of the 20<sup>th</sup>, then, I take the mercury pollution of the English-Wabigoon River system and its effects on Grassy Narrows and Whitedog First Nations as my point of departure; I explore how this struggle has been fictionalized in M.T. Kelly's ironic novel, *A Dream Like Mine*, and what this representation offers in understanding how complex

forms of liberalism continue to delimit the legibility of Indigenous peoples water rights, while coopting and undermining their practices of resistance.

**Chapter 2: Managing Settler Worlds: Late Liberal Governance, Environmentalism,  
and Indigenous Resistance in the English Wabigoon-River Systems and M.T.**

***Kelly's A Dream Like Mine***

“Structural violence is silent, it does not show—it is essentially static, it is the tranquil waters.” (Galtug 1969, 6)

Almost 2100 kilometres northwest from the homes of Moodie and Traill along the Trent-Severn Waterway, past the Great Lakes, west of the Ottawa River and its tributaries where the Navigable Waters Protection Act was first established, the English-Wabigoon River systems wind their way through Treaty 3 territory, what is now known as Kenora District in northwestern Ontario. They flow west to Manitoba, into the Winnipeg River, and eventually out to the Hudson Bay drainage basin—the largest drainage basin in the northern part of Turtle Island—and finally out into the Arctic Ocean. Before the waters of the English-Wabigoon River systems make it to the Winnipeg River and into the Arctic Ocean, they will toxify with substantial levels of methylmercury. Leeching into the rivers’ ecosystem, mercury will poison the lake and river beds, the aquatic plant-life, and then the fish, accumulating in the bodies of those who consume it. This river system is the homeland of the Treaty 3 Anishinaabe of Grassy Narrows First Nation (Asubpeeschoseewagong Netum Anishnabek)<sup>54</sup> and Wabaseemoong Independent Nations.<sup>55</sup> The river systems’ fish was their traditional food

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<sup>54</sup> While I try to use the appropriate Indigenous language when naming an Indigenous nation or community as much as possible throughout this dissertation, I offer the Anishinaabe version of Grassy Narrows in brackets here and refer to the First Nation as Grassy Narrows throughout this chapter given the prominence of this issue in national media and politics, and the ways in which ‘Grassy Narrows’ has become part of the national lexicon, often utilized by the community itself.

<sup>55</sup> While Grassy Narrows is often the community singularly cited as experiencing the effects of mercury poisoning, and while this is most likely the community implicitly referenced in Kelly’s novel,

source and the foundation of their economy until only a few decades ago. Between 1960 and 1970, Dryden Chemicals Limited, a subsidiary of Dryden Pulp and Paper Company and Reed Paper, two paper mills located upstream from these Anishinaabe communities, deposited over 20,000 pounds of untreated mercury wastewater into the Wabigoon River (Manko 2006, 7). In 1970, the Canadian federal government reported that the English-Wabigoon River systems were contaminated with mercury for at least 250 kilometers downstream. Scientists found high levels of methylmercury in the river systems' fish, devastating the traditional food source and commercial and recreational fishing industries of the Anishinaabe communities, and leading to high rates of mercury poisoning in the Anishinaabeg's population, which affect the community to this day (Ilyniak 2014; LaDuke 1999).<sup>56</sup>

The Wabaseemoong Independent Nations and Grassy Narrows First Nation reached a settlement with the federal and provincial government and the two paper companies in 1986 (Grassy Narrows and Islington Bands Mercury Pollution Claims Settlement Act, Bill C-110).<sup>57</sup> While mercury levels should have returned to normal in the absence of

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Wabaseemoong Independent Nations, or more specifically, the Wabaseemoong Independent Nations of One Man Lake, Swan Lake, and White Dog, has experienced similar effects further downstream. For more information, see Manko 2006.

<sup>56</sup> It is important to note that the Anishinaabe of Grassy Narrows and Wabaseemoong are not homogenous communities. As Ilyniak notes through her work with Grassy Narrows First Nation in particular, "They are diverse and maintain varying perspectives, ideologies, and practices" (2014, 46). She reminds us that "cultural groups cannot be understood as fixed and static entities. Instead, they can be seen as social structures, people, and the environment existing through the fluid and ever-changing processes of relations" (46). With this in mind, I speak of Grassy Narrows and Wabaseemoong throughout this chapter solely in relation to their experiences with the mercury pollution of their water sources. While this is not intended to be the defining event of these communities, it is an integral site through which to understand the effects of settler colonialism on Indigenous waterways and the ways in which Indigenous communities have resisted these effects.

<sup>57</sup> While the settlement provided some financial compensation for the band and was intended to set up an assistance fund for those individuals suffering the effects of Minamata Disease, a 2016 CBC report suggests that since 1986, almost no community members have been successful in their applications for this assistance. The settlement also did nothing to address the contaminated waters. For more information, see <http://www.cbc.ca/news2/interactives/children-of-the-poisoned-river-mercury-poisoning-grassy-narrows-first-nation/>

leaks, a recent study authored in February 2017 reports high levels of mercury downstream from the now decommissioned paper mills, suggesting that the river system is suffering from ongoing mercury pollution, rather than the aftermath of the decades old mercury dump (Loriggio 2017). In the summer of 2017, the Ontario government committed 85 million dollars to finally clean up the Wabigoon River, which includes a “comprehensive remediation action plan” that aims to find all contaminated sites that may be leaking mercury (Bruser, Benzie, and Poisson 2017). This long-overdue commitment to potentially resolve the contamination of the English-Wabigoon River systems and its effects on the Anishnaabeg occurs amidst the backdrop of ongoing and aggressive clear-cutting in the traditional lands surrounding the communities, the by-products of which have been cited as a possible cause of the ongoing mercury pollution. Grassy Narrows in particular has continued to call on its supporters and allies to put pressure on government to ensure that they adhere to these commitments so that they may finally achieve some form of justice in the community (Gibson 2018).

As is the case with many contemporary Indigenous rights issues in Canada, the mercury poisoning of the English-Wabigoon River systems is only the most recent iteration of colonial violence inflicted upon the communities. To be sure, since the signing of Treaty 3 in 1873, Grassy Narrows and Wabaseemoong, along with many of their fellow Anishinaabe Treaty 3 signatories across Ontario and Manitoba have resisted repeated attempts to sever them from their territories through the pollution and destruction of their lands and waters. Not unlike what happened to their Anishinaabe neighbours further south within the Trent River watershed over a century earlier, dam construction by Ontario Hydro in the 1950s led to flooding of much of Grassy Narrows

and Wabaseemoong's traditional territories, the drowning of their wild rice harvesting sites, and the eventual relocation of their communities away from their historic hunting and fishing routes and their ancestral burial grounds (Ilyniak 2014; Levere 2009, 17). Residential schools, discriminatory policies under the Indian Act, and the government's restriction of traditional hunting and fishing have all had detrimental effects on the communities' ways of life (Ilyniak 2014). In recent decades, the ongoing industrial logging throughout their territories led to the longest standing blockade in North American history, running from 2002 to 2016—a symbol of the persistence of assertions of Anishinaabe law despite such aggressive attempts to undermine its authority in the region (Da Silva 2016; Willow 2012). As Anishinaabe activist, Judy Da Silva notes, “Our experiences with the destruction of our water helped determine the way we reacted to the destruction of our land by logging” (2016).

Notwithstanding such ongoing and powerful acts of resistance, the mercury pollution of the English-Wabigoon river systems and its effects on Grassy Narrows and Wabaseemoong remains a fundamental issue for the communities. As Grassy Narrows' Chief, Simon Fobister Sr. explains, “The story of my people, the Grassy Narrows First Nation, weighs heavily on the collective conscience of Canada. For over half a century, mercury poison has contaminated the river that is our lifeblood” (2016, 2). The river systems provide the communities' basic needs for subsistence and are essential, as Da Silva notes, to their identity, culture, and “life as a nation – as Anishinaabe” (2008). With fish serving as a major staple in the diets of Anishinaabe from Grassy Narrows and Wabaseemoong, over 90% of their populations have tested positive for mercury poisoning (Manko 2006; Porter 2017). Due to the bioaccumulation and biomagnification

of mercury in living organisms, its effects are experienced as intergenerational, with even young people who have never ingested the contaminated fish showing symptoms of Minamata Disease—the disease associated with toxic levels of mercury accumulation (Government of Canada 2013; Porter 2017). The effects of the mercury poisoning in conjunction with government policies that have consistently degraded the Anishinaabeg’s traditional ways of life, have led to high rates of unemployment, suicide, alcoholism, and violence within the communities.<sup>58</sup> These devastating effects of a poisoned water system are illustrative of the settler colonial violence inflicted on Indigenous communities through their waters—how through attacking the “lifeblood” that is water, you undermine

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<sup>58</sup> The situation at Grassy Narrows and Wabaseemoong, and the ways in which it serves as the context for my discussion in this chapter, perhaps more than any other site of analysis in this dissertation, demands that I reckon with what Eve Tuck has called “damage-centered” research. In her 2009 “Letter to Communities,” Tuck calls on communities, researchers, and educators to resist “damage-centered” research—that is research in and with Indigenous communities—and I think this extends to the kind of discursive textual analysis we often practice in literary and cultural studies as well—that articulates the oppression faced by Indigenous peoples in a manner that positions their communities as always broken or depleted. Tuck writes, “I invite you to join me in re-visioning research in our communities not only to recognize the need to document the effects of oppression on our communities but also to consider the long-term repercussions of thinking of ourselves as broken” (409). Here Tuck cautions against portraying a community like Grassy Narrows for example, as it so often has been portrayed, singularly as the result of over a century of oppressive policies and thus rendering the peoples of these communities as always and only victims to these policies and their repercussions. Thus, in highlighting the difficult context of the mercury poisoning at Grassy Narrows and Wabaseemoong, my aim is not to reveal how it has led to the depletion of these Indigenous communities—to centre the damage caused through these processes; while understanding the effects and results of continuous settler colonial policies of abstraction is important and necessary, my primary goal is to examine the operation of such policies—how a settler liberal order laid the groundwork for the destruction of Anishinaabeg waters, and more specifically, how its manifestations under late liberal recognition-based politics continue to limit the communities from engaging in their relationships to the English-Wabigoon River systems as Indigenous peoples, and consequently propagating the illegibility of their inherent rights in this part of Treaty 3 territory. So while the effects of mercury pollution in the river systems of Grassy Narrows and Wabaseemoong may be undeniable, the point is to examine the ways in which it is in fact the settler colonial policies and hydrosocial relations that create the conditions for this pollution to happen. More importantly, I hope to move toward what Tuck calls a “desire-based research framework,” which as Tuck says, is “concerned with understanding complexity, contradiction, and the self-determination of lived lives” (416). Thus, while the majority of this chapter examines a fictional representation of the issues facing Grassy Narrows First Nation and Wabaseemoong Independent Nations in order to elucidate the complexity of late liberalism and its relation to water and Indigenous environmental justice, I conclude by returning to the communities themselves to explore the ways that the Anishinaabe peoples of these communities have resisted and continue to resist the settler liberal ordering practices that have so profoundly reshaped their territories and lives, and how Anishinaabe water law remains the lynchpin of seeking justice in and along the English-Wabigoon River systems.

the social, cultural, and governance structures of the communities that rely on it (McGregor 2009). Further still, government inaction and limited response to the industrial poisoning of these communities is illustrative of an adaptive mode of liberal governance, that, while grounded in the logics of possession established through the 19<sup>th</sup> century settler liberal order, now reduces rights claims and appeals for justice to limited forms of cultural recognition that fail to challenge the material conditions and liberal presumptions that allow such events to take place. As I will show in what follows, this contemporary form of liberal governance works to define and constrain the legibility of Indigenous rights in the settler state, while perpetuating the destruction of Indigenous lands and waters.

While the operation of a liberal recognition-based politics manages Indigenous rights in decidedly new ways through the latter half of the 20<sup>th</sup> century, it has its roots in the settler logics of possession and liberal ordering that precede them, and which have continued largely unabated since the 19<sup>th</sup> century. The paper mills at the centre of the initial mercury poisoning of these communities are Moodie's mills, the same that he had seen devastate the fish populations of Upper Canada over a century earlier, and which he lamented as an unfortunate by-product of a necessary settler ingenuity. These paper companies are part of Traill's settler economy, that which exists as a necessary marker of the progressive space-time of settler colonialism, and in opposition to the localized Indigenous economies premised on the harvesting of things like "Indian rice." This is to say that the pulp and paper industry in northwestern Ontario, along with its devastating effects on the waters of the Treaty 3 Anishinaabeg, are the product of a settler liberal order established in the waterways of 19<sup>th</sup> century Upper Canada. To be sure, if the

effectiveness of the environmental protections offered by the Navigable Waters Protection Act remains open for debate, the mercury poisoning of Grassy Narrows and Wabaseemoong along the English-Wabigoon River systems offer a stark reminder of the Act's intended purpose as a tool for settler navigation and propertization, and of its limited scope in protecting both the environment and Indigenous water rights.

While the situation in the waterways of the Anihnsnaabeg in this part of Treaty 3 territory is illustrative of the extension of a settler liberal order in Indigenous waters into the 20<sup>th</sup> century, this chapter aims to examine how liberal governance and its settler subjectification adapts and responds to such situations in an era of increased environmental awareness and Indigenous rights recognition. I am interested here in how the liberal order persists, albeit in seemingly more progressive, well-intentioned, and self-aware ways, at the same moment of global human rights and Western environmental discourse. How is it that Indigenous waters face the devastating effects of ongoing pollution, with Indigenous rights delimited by settler Canadian sovereign authority, and in the context of a proclaimed multicultural society? While the settler liberal order explored in chapter one certainly sets the stage for the logics of possession that create the conditions for the situation at Grassy Narrows and Wabaseemoong, this chapter argues that liberal ideology in the latter half of the 20<sup>th</sup> century reorganizes itself around notions of hegemonic inclusionary politics, which work to obscure the legibility of Anishinaabe water rights in the wake of such environmental disasters. Further, this liberal ideology of recognition and inclusion, what I will refer to, drawing on Povinelli among others, as "late liberalism," is the contemporary mode of liberal governance that delimits the meaning of Indigenous rights in Canada, and ensures that the conditions required for the

remaking of Indigenous water worlds—the sustaining and rebuilding of the Anishinaabe laws that had previously structured Anishinaabe relationships to their lands and waters—remain unachievable.

### **From a Settler Liberal Order to Late Liberalism**

While the situation at Grassy Narrows First Nation and Wabaseemoong Independent Nations is the integral backdrop of this chapter, my primary aim is to continue my task of tracing the history of hydrosocial relations and water rights in Canada, and particularly in these first two chapters, as they are shaped by the project of liberalism and, more specifically, its late liberal manifestations, which reorders Indigenous waterways in the image of settler colonialism. The liberal ordering practices that I mapped in chapter one certainly set the stage for the reterritorialization of Treaty 3 Anishinaabe lands—with the sovereign interests of the Crown and property holding settlers transforming mobile hunting societies existing across vast territories, to stationary, reserve-based communities with little control over their traditional lands; and with Anishinaabe social structures transformed from fishing economies, premised on integral relationships with the lakes and rivers that surrounded them, to their waters refigured first as a utility via the hydro dams that flooded their territories and harvesting practices, and then as the receptacle of toxic waste—the fruition of the capitalist logics of extraction that dominate settler colonial hydrosocial relations. While the effects of these liberal ordering practices, those established throughout the 19<sup>th</sup> century, and propagated by early settler writers like Moodie and Traill, and through policies such as the NWPA,

persist into the remaking of the Anishinaabe waterways in Grassy Narrows and Wabaseemoong, this chapter is predominantly concerned with how late liberal forms of cultural recognition, conceptions of justice, and limited forms of “environmentalism,” as they emerge in the latter half of the 20<sup>th</sup> century, circumscribe meaningful engagement with the inherent rights of these Anishinaabe communities into our contemporary moment.

There are a number of terms that capture what it is I mean by “late liberalism” and how it differs from, yet advances the logics of a settler liberal order. Jodi Byrd, for example, refers to contemporary forms of liberalism as “liberal settler colonial multiculturalism,” a liberal form of governance that “created internally contradictory quagmires where human rights, equal rights, and recognitions are predicated on the very systems that propagate and maintain the dispossession of indigenous peoples for the common good of the world” (2011, xix). Yellowknives Dene scholar Glen Coulthard refers to a liberal “politics of recognition,” writing, “a politics of recognition in its contemporary liberal form promises to reproduce the very configurations of colonist, racist, patriarchal state power that Indigenous peoples’ demands for recognition have historically sought to transcend” (2014, 3). Both thinkers distill the contemporary Indigenous rights terrain in the U.S. and Canada as that which aims to incorporate the unique status of Indigenous rights, those which have never been fully realized, under the banner of state multicultural policies of hegemonic inclusion, which seek only to recognize Indigenous peoples for their cultural difference, rather than as distinct Nations with inherent rights stemming from their historical relationships with the Crown, and as the original inhabitants of Turtle Island. Jennifer Henderson similarly describes a kind of

benevolent settler liberalism that affectively and materially disembeds historical wrongdoing from the broader context and frameworks of Canadian settler colonialism; in so doing, liberal discourses of progress and improvement and their corresponding state policies manage the lives and wellbeing of Indigenous peoples in ways that supersede the material conditions that might lead to the “restitution of powers, the jurisdictions, the lands necessary for the Indigenous to live as distinct peoples” (2015b, 9). Through these “subtle and mobile powers of liberal inclusionary forms of national imagining and national culture,” to draw from Mackey, progressive forms of liberalism thus mobilize limited practices of recognition-based politics toward the disavowal of ongoing processes of settler colonialism (2002, 5).

All of these theorists draw attention to the recognition-based politics of 20<sup>th</sup> and 21<sup>st</sup> century liberal governance that I address in this chapter. Elizabeth Povinelli’s notion of “late liberalism” effectively encompasses the progression of liberal politics that I am attempting to trace, as it extends the reach of the liberal ordering practices I address in chapter one, and transforms their function within the context of the 20<sup>th</sup> and 21<sup>st</sup> century capitalist economy. In her 2011 text *Economies of Abandonment*, Povinelli suggests that late liberalism can be understood “as the governance of social difference in the wake of anticolonial movements” (Ix). Povinelli is careful to note that late liberalism is not necessarily a break from earlier liberal forms of governance, nor is it completely separate from the social struggles of neoliberalism—the notion that the market should be the measure of all social activities and values, which emerged through aggressive economic policies in the 1970s and 80s (Povinelli, 17); rather, “by ‘late liberalism,’ as distinct from these varieties and specificities of capitalism and state,” she writes, “I mean the shape

that liberal governmentality has taken as it responds to a series of legitimacy crises in the wake of anticolonial, new social movements, and new Islamic movements” (25). In a broader sense, “late liberalism is a belated response to the challenge of social difference and the alternative social worlds and projects potentially sheltered there” (25). Rather than attempting to assimilate difference, as a liberal order of governance had through 19<sup>th</sup> century policies such as the Gradual Civilization Act or various stipulations under the Indian Act, late liberal forms of governance attempt to manage difference through its incorporation into a seemingly more progressive and inclusionary liberal order (see Coulthard 2014). Under late liberalism the question shifts from that of *explicit* Western cultural hegemony and active exclusion of those peoples and cultures that cannot be subsumed into the liberal order, to a concern for “how to allow cultures a space within liberalism without rupturing the core framework of liberal justice” (26). Notably, the latter is the mode of governance under which Prime Minister Pierre Eliot Trudeau proposed the 1969 White Paper, the “Statement of the Government of Canada on Indian Policy, 1969,” which sought to abolish previous legal documents pertaining to Indigenous peoples, including treaties, the Indian Act, and all of the rights that they upheld. The aim was to fold Indigenous peoples into the body-politic of Canada as one distinct culture among many within a multicultural society (Turner 2006). While the White Paper ultimately failed, the result of such attempts at liberal inclusionary governance becomes what Povinelli calls “a crisis of culture for the governed as state after state instituted formal or informal policies of cultural recognition (or cognate policies of multiculturalism) as a strategy for addressing the challenge of internal and external difference that they faced” (25). In short, and in relation to this project, this form

of liberalism draws on narratives of inclusion and collective justice, in order to protect the core framework of the liberal modes of governance that continue to hold power over Indigenous peoples.

Late liberal modes of governance are integral for understanding how the settler Canadian state delimits the meaning of Indigenous rights through limited policies of cultural recognition. More specifically, late liberalism makes sense of Indigenous rights discourse in the settler state, and what these rights might mean in relation to the events such as that of the ongoing mercury poisoning at Grassy Narrows and Wabaseemoong. Indeed, the question arises as to what Indigenous water rights could possibly amount to when Indigenous water systems face ongoing contamination, and in ways that are irrevocably detrimental to the lifeways of the communities affected? What could government response to such crises mean when the dispossession of Anishinaabe lands through deforestation specifically, or the negation of their inherent rights more generally, continues unabated? Povinelli explains how, “Late liberal cultural recognition incorporated and disciplined the challenge that anticolonial and new social movements posed to liberal forms of government by shifting the locale of the crisis and creating a definitive, though undefined, limit on the formative legal and social power of cultural difference” (26). While, as discussed above, the threat to the cultural wellbeing of the Anishinaabeg communities suffering the effects of mercury poisoning in their river system cannot be understated, late liberal forms of governance ensure that this event will only ever be recognized as a crisis of a limited conception of culture in need of repair, rather than as a crisis of capitalism, liberalism, law, or settler colonialism. Put another way, late liberal cultural recognition ensures the socio-political and legal limits of

assertions of Anishinaabe environmental justice in the wake of such crises. By responding to the crisis in the English-Wabigoon River systems through narratives of cultural repair and meager, often unfilled policies of financial compensation—when responded to at all—the settler state ensures that justice for the Anishinaabe of Treaty 3 will not challenge the very conditions that have required them to seek justice in the first place—that the underlying material conditions that allow some waters to be polluted and not others, will not be addressed or altered.

Dian Million describes such responses as occurring in a “transitive” period, “where liberal western politics and capitalist economies moved from a disciplinary colonialism to a normative welfare state “caring-capital” that has now dissolved into our present, a well-integrated neoliberal multicultural biopolitics” (8, 2013). The results of this transitive period are the contemporary setting under which the inherent rights of Indigenous peoples, their rights to their lands and waters, and to self-determination and jurisdictional sovereignty, are given meaning—or more aptly, evacuated of it— within the settler state. Million quotes Susan Koshy in order to expand: “Neocolonial strategies of power are increasingly articulated not through the language of the civilizing mission . . . but through a new universalist ethics of human rights, labor standards, environmental standards and intellectual property rights” (Koshy 1999, qtd in Million 2013, 10). Under this mode of late liberalism, the Indigenous becomes the “universal subject of a positive human rights” (Million, 10). The events that happen in communities such as Grassy Narrows and Wabaseemoong are reframed and responded to as humanitarian crises, sites in need of state repair, and requiring further management through state intervention—the bestowal of what Indigenous communities are assumed to have lacked up to this point

(Million, 10-13). While this critique is not to undercut the Anishinaabe communities' demands that the state rectify the damage its policies have allowed to happen, late liberal forms of governance ensure that Indigenous peoples' political power—the realization of their inherent rights—“is continuously deferred to a future self-healing from capitalism's present and ongoing violence” (Million, 12).

While Grassy Narrows First Nation and Wabaseemoong Independent Nations are important sites through which to examine the operation of late liberal responses to the water pollution of Indigenous communities—and as I have stated, this is the undeniable context of this chapter—in what follows, I explore the complexities of late liberalism and its relation to Indigenous rights claims predominantly through the fictive representation of M.T. Kelly's *A Dream Like Mine*. I move from the site of the “real”—the real and ongoing situation experienced at Grassy Narrows and Wabaseemoong—to the fictive—the representation of these events by a settler author—for several reasons; first and foremost, to discuss the experiences of the Anishinaabeg of Treaty 3 in nuanced detail requires a more intensive and extensive community-based project, one which is beyond the scope of my current work. Secondly, while these experiences are important to my discussion, and the responses of the Indigenous communities affected by dominating settler hydrosocial relations are an integral thread through this entire dissertation, in this chapter I am primarily concerned with investigating the multifaceted logics of late liberalism and their relation to the legibility of Indigenous rights around water. Fiction provides me with the kind of critical distance to examine the operation of late liberal discourses surrounding Indigenous rights and environmental degradation and the potential subjective responses of various actors mired in its complex terrain. More

specifically, I examine a novel that stages the subjectification of late liberal modes of governance in order to expose their limits in the context of a fictionalized Indigenous community.

Articulating his interest in “writer-activists” — those writers who take up themes of environmental justice, and who themselves may be involved in sparking or participating in environmental justice movements—Rob Nixon writes, “Writing can challenge perceptual habits that downplay the damage . . . and bring into imaginative focus apprehensions that elude sensory corroboration. The narrative imaginings of writer-activists may thus offer us a different kind of witnessing: of sights unseen” (15). While Kelly’s position as writer-activist may be less than certain, his narrative illustrates the complex political terrain of environmental justice in a settler-colonial context; importantly, and especially through the use of his first-person narrator, Kelly offers an ironic dramatization of settler liberal responses to the industrial pollution of an Indigenous community’s water—a community which suspiciously resembles Grassy Narrows or Wabaseemoong—in ways that permit a staging of the complex subjective and social dynamics involved in liberal recognition on the side of settlers. Povinelli aptly articulates the kind project I aim to undertake here, writing,

I try to understand on the one hand, how the real hopes and optimisms invested in a particular form of national association—liberal multiculturalism—divert social energy from other political and social forms and imaginaries; how they make certain violences appear accidental to a social system rather than generated by it; and, most important, how they attribute and distribute failures arising from a social system to conflicts between social systems. (2002, 7)

Kelly’s settler narrator is the embodiment of these hopes and optimisms, representing a settler investment in progressive politics, but in ways that divert energy and attention from the complexities of Indigenous rights and environmental justice. Further, in the

narrator's ironic positioning, the reader is presented with a settler subjectivity that fails to transcend the distributive failures and violence of social systems premised on colonialism, extractive capitalism, and liberal rights. By taking literature as a site through which to engage the complex manifestation of late liberal discourse and its relation to Indigenous rights and environmentalism in the settler state, through Kelly's narrator/protagonist, I am able to critically examine a representation of how well-meaning settlers internalize and enact what I identify as fluid forms of late liberal governance.

Where the writing of Traill and Moodie depict a settler liberal subjectification premised largely on the settler logics of possession perpetuated through a 19<sup>th</sup> century settler liberal order, Kelly's settler narrator represents the more insidious embodiment of settler desires, fantasies, and limited forms of association that are reproduced in a late liberal regime of governance. The novel's protagonist enacts forms of late liberal sanctification, which I will address below, in ways that make the limitations of late liberal governance difficult to address and alter. In this chapter, I am dealing with the complications of the well-meaning and well-intentioned subjective dynamics, the elements of settler desire and self-delusion that perpetuate the logics of dominant settler colonialism within Indigenous waterways in the latter half of the 20<sup>th</sup> century and in important ways, that persist into our contemporary moment. The novel, then, allows me to trace the nuances of late liberalism, its subjective identifications, fluidity and contradictions, without risking assumptions or generalizations about, or undermining the political work occurring within the ongoing situation affecting these two Anishinaabe communities.

It is in the context of late liberalism—through its mobile and fluid assertions of power, enacted through inclusionary politics that trade in a superficial care and concern for a shared environment and its degradation—where I locate the settler logics of possession that delimit the meaning of Indigenous water rights into our contemporary moment. Where Moodie's settler-colonial narrative all but refuses Indigenous existence, offering a portrait of the settler subject who is generated by his very act of colonization of the environment and erasure of Indigenous inhabitants, Kelly's narrator-protagonist in *A Dream Like Mine*, through late liberal iterations of the long-standing maneuver of settler indigenization, attempts to regenerate himself through incorporation of the Indigenous, at the same moment that his liberal desires and guilt are implicated in the destruction of Indigenous lands and waters. The reader is ultimately presented with a settler subject that simultaneously laments past forms of colonization, desires new relationships with the environment—premised on (represented) Indigenous understanding—while enacting settler logics of possession that ensure the preservation of settler presence, once again, through the implied death of Indigenous peoples. The forms of settler liberalism explored in this chapter are illustrative of the dominant hydrosocial relations that shape settler engagement with the environment, and in ways that delimit both Indigenous calls for justice, and ultimately, the legibility of Indigenous rights in the settler state. Where Kelly's ironic portrayal of late liberalism necessarily stops short of offering a representation of what Indigenous resistance looks like under the confines of this mode of liberal governance, I conclude this chapter by returning to Grassy Narrows and Wabaseemoong in order to briefly consider the ways that these communities continue to push back against the kind of late liberal settler logics of possession exposed in Kelly's *A*

*Dream Like Mine*, and experienced through the real political responses to the ongoing crisis in their waterways.

### *Environmental Justice Under Late Liberalism*

Before turning to the novel, a note on the discourse of environmentalism is useful for understanding the conception of the environment and environmentalism that I draw on in this chapter and moving forward through this dissertation. What we understand as Western environmentalism as it emerges in the latter half of the 20<sup>th</sup> century has profound effects in shaping Western hydrosocial relations and environmental concerns more generally. The mercury poisoning of the English-Wabigoon river systems is by all accounts an environmental disaster. Even when considered in the context of capitalism, Indigenous rights, and liberalism, the ultimate effect of these processes is evident in the environmental degradation of this region. Notably, the environment registered in the latter half of the 20<sup>th</sup> century is not exactly the same as that appealed to by Moodie and Traill, and referenced in the earliest versions of the Navigable Waters Protection Act in the 19<sup>th</sup> century. While the aim of this dissertation is not to offer an in-depth environmental history of Canada, understanding dominant trends in discourses of environmentalism is integral for conceptualizing engagements with water over almost two centuries, and for the disentanglement of Indigenous rights from liberal environmentalism as it emerges in the latter half of the 20<sup>th</sup> century, often undermining the meaning of Indigenous territorial struggles.

Where earlier engagements with the environment were often uncritically extractive, late liberal modes of environmentalism draw on notions of a shared

environment and environmental justice which reinforce the core framework of liberal justice and often at the expense of Indigenous rights. In the introduction to his environmental history of Canada, Neil Forkey notes, “At the surface level, Canadians’ experience with the natural world has been informed by two major impulses. The first is the need to exploit natural resources, while the second is the desire to protect them” (2012, 3). Late liberalism tends to cut down the middle of these distinctions, at once idealizing relationships with the natural world, and seeking policies that might lead to their conservation or protection, while at the same time, ensuring that the tenets of liberalism—the inalienable rights of the individual, private property, and capital accumulation—remain intact. Further, Canadians’ desire to protect the natural world commonly does not extend to those regions inhabited by Indigenous peoples. While Forkey’s characterization is, as he himself admits, a blunt division, and one which overlaps in various ways across periods of settlement and nation-building, it is useful for representing the dominant impulses toward the environment and how they differ in significant ways between the 19<sup>th</sup> and the 20<sup>th</sup> and 21<sup>st</sup> centuries. I offer here a brief synopsis of the dominant strands of this environmental history in order to better understand the late liberal environmentalism so often enmeshed with Indigenous rights issues, and which I take up through Kelly’s novel.

As chapter one illustrated, the early 19<sup>th</sup> century was largely an era of unapologetically reshaping the environment toward the development and prosperity of the settler nation. Natural historians, armed with an increasing interest in scientific inquiry, undertook the “cataloguing and classifying” of resources “so as to expand the wealth and knowledge of empire and nation,” they observed “climate so as to assist

agriculture,” and probed “the life cycles and habits of flora and fauna useful to new settlers” (Forkey 2012, 16). As Forkey writes, “Natural historians—whether they were amateurs with an interest in botany or professional scientists—gave Western civilization some of the first narratives of the land, its resources, and its potential for development” (16-17). As discussed in the last chapter, even Traill, a natural historian in her own right, articulated a lament for the rapid loss of her region’s natural resources in ways that did not extend to an articulation of the requirements for their protection. The building of the Canadian Pacific Railway, along with the burgeoning timber industry, for example, resulted in the loss of one-third of the mature woodland south of the Canadian shield by the 1840s, with 90 percent gone by World War One (Forkey, 9). Even with a small population in relation to the vast geography of British North America, settler society through the 19<sup>th</sup> century largely engaged the environment as a kind of bountiful storehouse, aiding national progress and reshaping the landscape in significant ways.

Notably, from the early 19<sup>th</sup> century onward, even amidst extractive engagement, glorifications of nature, and artistic concern for the sublime also worked to idealize and romanticize the environment. Forkey explains how, “Both founding European groups coveted nature. Some sought in the wilds a reinvigoration of their Anglo-Saxon heritage through the celebration of nature, viewing the land as an inspiration and a national symbol” (68). This era saw an array of nature writers, from Ernest Thompson Seton, to the significance of *le roman de la terre* (the novel of the land) in French Canada. Indeed, we see this tension between a mastery over nature and glorification of its sublime power in J. W. D. Moodie’s own ambivalent descriptions of the bountiful, but unruly landscape of Upper Canada. These tendencies toward the environment sparked policies of romantic

preservation toward the end of the 19<sup>th</sup> century, as the provinces and federal government began instituting Canada's national and provincial parks system, further connecting the environment to Canadian national identity. This romanticizing of the Canadian landscape is a prominent theme through Canadian literary history and criticism, from J.W.D.'s wife Susanna Moodie, to the Confederation Poets at the turn of the 19<sup>th</sup> century, to prominent literary critics in the middle of the 20<sup>th</sup> century, such as Northrop Frye and Margaret Atwood, who directed their attention to analyzing environmental determinism as a key theme of Canadian literature (see Fee 2015). Kelly's narrative is indebted to this long history as his ironic dramatization of the narrator's relationship to the environment draws on these romanticizing tendencies.

If the early 19<sup>th</sup> century was marked by development and extraction, with a persistent thread of romanticism, its latter half and the early 20<sup>th</sup> century sought aggressive wide-spread legislation to manage natural resources. This is indeed the moment that brought about the institution of the Navigable Waters Protection Act, which served as an extension of the liberal propertization of water, but in ways that supported national development through resource management. While chapter one glossed the institution of regulations that emerged during the last third of the 19<sup>th</sup> century to protect, or more often, manage natural resources, the park's system aside, this was largely a state effort to conserve these resources for future use, rather than to *preserve* them as an end in themselves. As Forkey makes clear, "we must recognize that conservation did not necessarily imply sustainability," with the latter term not introduced into our vocabulary until a century later (35). Even as Jamie Benidickson reminds us in chapter one, that during 19<sup>th</sup> century environmental policy making "officials typically equated the

industry's well-being with the public interest" (5), a progressive awareness in the necessity of natural resources in the daily lives of Canadians and to sustain the ever-growing nation state resulted in the development of resource policy that shaped Canadian environmental discourse and social policy more broadly into the 20<sup>th</sup> century.

The second half of the 20<sup>th</sup> century ushered in a phase of economic prosperity and expansion in Canada. The post-World War Two era, with its dramatic increase in population growth, also saw an increase in consumer needs and thus in mass-scale environmental degradation. The post-1950 era brought an increase in the size of major urban centres, such as Toronto, growth in family size, and the creation of the suburbs, all of which demanded more natural resources. This increased prosperity signalled a new era of dramatically modifying the environment, "the introduction of new chemicals for a wide range of uses, and the overharvesting of wildlife" (Forkey, 85). This is the moment when mega-projects, such as the James Bay Hydroelectric Dam discussed in the next chapter, are constructed on a scale not previously undertaken in Canada. With an increased scientific understanding of ecology and the natural world as a unified whole—as an ecosystem—along with the wide-spread publication of human-created environmental catastrophes, the latter half of the 20<sup>th</sup> century also provided the conditions for the beginning of a global environmental movement.<sup>59</sup>

Even as their levels of consumption had some of the most dramatic environmental effects, the burgeoning "baby-boomer" generation sought an approach to the environment

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<sup>59</sup> Rachel Carson published *Silent Spring* in 1962, with its message that the use of common pesticides such as DDT could have seriously harmful effects on humans. In 1969, the Cuyahoga River in Ohio, which had served as the dumping ground for chemical companies, caught fire. In 1984, three thousand people died after toxic gas leaked from the Union Carbide plant in Bhopal, India. These events, among many others, captured global attention and illustrated the devastating effects of human impact on the natural environment in a way not seen or understood previously.

that differed from that which had preceded it. Environmental activism became part of popular discourse in music, literature, and public policy.<sup>60</sup> 1972 saw the creation of the Great Lakes Water Quality Agreement between Canada and the United States, in order to restore and better maintain the biological integrity of these shared waters. The Canada Water Act (1970) was also developed during this era, seeking to reduce the amount of allowable emissions in Canadian waters and to manage water resources on a national scale. To be sure, the second half of the 20<sup>th</sup> century marked the most rapid period for the creation of environmental policy, activism, and cultural production, that significantly shaped dominant conceptions of what we understand as environmentalism today.

The late 20<sup>th</sup> and early 21<sup>st</sup> century also led to a shift in environmental history itself. As Castonguay and Kinsey note, “Over the past thirty years, environmental history has sought to fully acknowledge the developments of scientific ecology and cease to treat human actors as if they were extricated from their environment” (2009, 223). In our contemporary moment, this thinking has evolved into a greater awareness of the effects of global climate change, and the realization that the localized environmental efforts that arose in the second half of the 20<sup>th</sup> century—legislative protections, recycling, and attempts to bring human environmental impact into our collective consciousness—are simply not enough to curb the effects of our globalized, capitalist consumptive practices—those which have potentially brought about a sixth mass extinction event, commonly referred to as the Anthropocene (Crutzen and Stoemer 2000). The beginning

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<sup>60</sup> Margaret Atwood’s 1972 novel *Surfacing*, for example, bridged feminism with environmental concern that critiqued both human engagement with nature and American foreign policy. Hugh MacLennan’s 1974 coffee table book, *Rivers of Canada*, explored the human impact on Canadian waterways, an impact which he had previously celebrated just over ten years prior in his 1961 essay collection, *Seven Rivers of Canada*. Literary concerns over environmental degradation emerged in tandem with activist organizations such as Greenpeace and Pollution Probe, and state responses to managing pollution.

of this shift in environmentalism, in its history, and newfound cognisance of human's intricate relationship with the natural environment is precisely the moment of Kelly's *A Dream Like Mine*, which stages the limits of a late liberal environmental awareness and its relationship to Indigenous environmental justice issues.

While Kelly withholds offering alternatives outside of his ironic portrayal, his dramatization of a fraught liberal environmentalism gestures to the absence or misrepresentation of an Indigenous environmentalism in dominant green and environmental discourse. Indigenous environmental justice often stands in stark contrast to the Canadian environmental history outlined above. While Julian Agyeman, Peter Cole, Randolph Haluza-DeLay, and Pat O'Riley highlight resistance to the first James Bay Project in the 1970s as a major catalyst for Indigenous environmental activism, they are careful to assert that Indigenous environmental justice movements extend beyond the history of the Canadian nation itself. They assert, "There *have been* environmental justice movements [on these lands] for centuries (if not millennia)" (2010, 2). Indigenous environmentalism has its roots in Indigenous cultural perspectives and legal orders and as Cherokee scholar Jace Weaver notes, in contrast to mainstream environmental discourse, "discussion of environmental justice from a Native perspective requires analysis of sovereignty and the legal framework that governs environmental matters in Indian country" (1996, 108).

While Indigenous environmental justice movements are often not accounted for in dominant environmental histories, Indigenous peoples disproportionately bare the effects of environmental *injustice*. Agyeman et al. highlight the structural and systemic causes of

this injustice, and while these issues have been touched on elsewhere, they warrant repeating here in the context of environmentalism:

Aboriginal peoples are faced with systemic environmental injustice in terms of treaty and land claim process; the situating of energy projects on or near their traditional territories; air, water, and land pollution; deplorable drinking-water quality issues [and] resource extraction by outsiders on unceded territories by government-sanctioned contracts; the lack of ready and affordable access to economic development where they live; poor quality of life conditions, including access to education and health care; the failure by the Canadian state to recognize underlying and unalienable Aboriginal title and rights; and the unwillingness of the Canadian state to right the historical wrongs to First Peoples. (12)

Here the authors centre environmental injustice as the primary site of violence where settler colonial policies and possessive logics coalesce. Late liberal governance structures and their management of environmental justice movements ensure that Indigenous environmental justice is circumscribed within the frameworks of liberal justice. Kelly's critique in *A Dream Like Mine* highlights this implication, dramatizing how settlers reproduce the logics of late liberal environmentalism in relation to ongoing Indigenous rights issues.

In his discussion of what he calls "the environmentalism of the poor," that is what environmentalism might look like for "those people lacking resources who are the principle causalities of slow violence" (4), Rob Nixon writes,

Where green or environmental discourses were once frequently regarded with skepticism as neocolonial, Western impositions inimical to the resource priorities of the poor in the global South, such attitudes have been tempered by the gathering visibility and credibility of environmental justice movements that have pushed back against an antihuman environmentalism that too often sought (under the banner of universalism) to impose green agendas dominated by rich nations and Western NGOs. (4-5)

Nixon's conception of this resistive "environmentalism of the poor" could certainly extend to Indigenous peoples living in Canada's north, and his sentiments offer a hopeful

narrative for Indigenous environmental justice movements in gathering larger environmental supports. However, if approaches to environmentalism are beginning to shift toward a centering of the dispossessed—and I am not sure that this is necessarily the case—the logics of late liberal governance still structure engagements with the environment in ways that foreclose upon environmental justice for Indigenous peoples, and for the realization of Indigenous rights in the settler state. Kelly’s novel helps me to examine how Indigenous rights, specifically as they are asserted in relation to ecology and environmental destruction, remain circumscribed by a mode of liberalism that, while seeking to uphold and celebrate Indigenous approaches to the environment, in often appropriative ways, remains fundamentally committed to the material conditions of a liberal order at the root of environmental injustice in Indigenous communities.

While Kelly’s novel is about environmentalism in a general sense, once again, and as is the case with the real struggles of Grassy Narrows and Wabaseemoong, water offers the most illustrative means of understanding both the operation of and stakes of a dominant settler liberal order and its late liberal manifestations. As such, I begin my analysis below by reading *A Dream Like Mine* for what it offers in representing a late 20<sup>th</sup> century shift in settler environmental engagement and its relation to Indigenous rights. I then turn to its representation of water in order to reveal the ways in which water is mobilized toward settler regeneration and futurity under the logics of late liberalism. While water as a means toward settler futurity was present in the 19<sup>th</sup> century liberal order, and expressed through the writing of Moodie and Traill, and in the Navigable Waters Protection Act, this register takes on a more insidious dynamic under 20<sup>th</sup> and 21<sup>st</sup> century late liberalism, occluding the requirements for the remaking of Indigenous water

worlds through its management of Indigenous resistance and justice. As I will show through the actions of Kelly's protagonist, water is at once recognized as a site of pollution and violence, and also the means through which the settler subject achieves regeneration under late liberalism.

### **Late Liberal Environmentalism in M.T. Kelly's *A Dream Like Mine***

In his introduction to the 2009 Exile Editions publication of *A Dream Like Mine*, Daniel David Moses writes "A white man from Toronto, an Indian from northern Ontario, and someone who seems to be a Métis from out west go into the northern wilderness together to fish, and it's not the set-up for a joke" (Moses 1999, vii). Far from humorous, Kelly's narrative is often disturbing and unsettling. The novel's unnamed narrator finds himself on an Ojibway reserve somewhere near Kenora, Ontario, tasked with writing a "tight and bright" piece on traditional Indigenous healing approaches to alcoholism (2). Meeting with an elder from the community named Wilf and a disconcerting "Métis" outsider named Arthur, the narrator is ultimately asked not to write a story that emphasizes the community's issues with substance abuse. Content to spend his time in the north satisfying his romantic consumption of Indigenous culture, the narrator agrees. His idealized views of Indigenous peoples, and his liberal sensibilities, however, are shaken to the core as he must shift his focus from the trope of the victimized Indigenous person—the notion of "Aboriginal wounded subjectivity" wherein Indigenous peoples are pathologized in their suffering of past injustices, to draw again from Million

(2013, 6)—to the Indigenous political activist—the Indigenous subject seeking material change, and even revenge, for ongoing inflicted colonial violence.

M.T. Kelly's novel, *A Dream Like Mine*, originally published in 1987, has received relatively little scholarly attention, despite winning the Governor General's Award for fiction and being adapted for the 1991 film, *Clearcut*. Exile Editions republished the novel in 2009 with an introduction by Haudenosaunee writer, Daniel David Moses. Between Moses' introduction to the 2009 Exile Edition, two other critical readings of the text (Langston 2012; Wainwright 1999) and an unsympathetic review on the heels of its initial publication by Terry Goldie (1987), the reception of *A Dream Like Mine* has been fairly uneven. The novel has been read as appropriative and reductive (Goldie), complex and resistive (Langston; Wainwright), and even as anticipating Indigenous struggles to come (Moses). There is, however, consensus on the novel's disorienting narrative, its frustrating, if not poor execution, and, most importantly, the ways that it seems to resist stable readings of its unsettling characters and unruly political stance.

As Moses makes clear in his criticism, *A Dream Like Mine* is no doubt problematic in its representations of Indigenous peoples and culture, reducing its Indigenous characters to either sentimental elders or violent and unstable activists. While Indigenous peoples and their traditions are romanticized, the Indigenous reserve is strangely absent of people and portrayed in a state of squalor. This is not to mention the almost nonappearance of Indigenous women, or any women for that matter. Given these limitations, we may indeed read the novel as Goldie does, as “an interesting example of what happens when a white author obsessed with ‘getting it right’ tries to write right

himself' (1987, 30). Alternatively, given the novel's concern with exploring the psyche of its settler colonial narrator, we could read the novel more sympathetically, as Moses does, as an "undeniable return of the repressed" (1987, vii). I follow Moses' reading, as the settler narrator's liberal subjectivity and liberal sense of justice, his repressed colonial desires and logics of possession, return to haunt and influence his actions and responses to the environmental destruction in an Indigenous community.

The novel's fictionalized Ojibway reserve is an obvious reference to the Grassy Narrows First Nation or Wabaseemoong Independent Nations in north-western Ontario, which suffered the effects of mercury poisoning when Dryden and Reed paper companies dumped 10 tonnes of mercury into the English-Wabigoon River systems between 1960 and 1970. Despite the obvious political situating of the text, Kelly's narrative is unwieldy, at times obvious in its ironic self-conscious articulation of the limitations of late liberal settler sensibilities in relation to Indigenous communities, politics, and the environment; other moments could be, and have been read as indicative of a novel that seemingly has little control over its own problematic representation of Indigenous peoples, mobilizing those representations as tropes to articulate insights about settler identity. Critics who have read the novel in these ways have glossed its ironic potential, which I draw out here. These more troublesome moments, should be read, I argue, as the fruition of Kelly's efforts, laying bare the settler liberal sensibilities that both comprise the narrator/protagonist and implicate the reader in an uncomfortable and unsettling witnessing—a witnessing of the subjectification of late liberal environmentalism and governance structures and their effects on Indigenous rights and resistance. The problematic representations of indigeneity throughout the novel, the portrayal of the

Indigenous characters who accompany the narrator through his terrifying journey, are importantly those related to us exclusively by the narrator himself; they are the stereotypes and anxieties of the narrator that work to dramatize the settler liberal politics and identity enacted throughout. Irony is mobilized first to reveal the limits of the narrator's liberal desires, and ultimately to implicate a settler audience in a process of settler regeneration perpetuated through liberal engagements with Indigenous environmental justice. While we can surely critique Kelly for his incautious or ill-advised portrayal of indigeneity, I argue that *A Dream Like Mine* is intended to be read as entirely a story about white liberal settler subjectification, seen claustrophobically and phantasmatically from the inside of the settler subject. As such, *A Dream Like Mine* serves as an apt, if complicated dramatization of the type of settler liberalism that organizes settler relationships both to the environment and to Indigenous environmental justice. Kelly's settler subject upholds his presence on Indigenous lands through limited notions of environmental justice and a perceived waning Indigenous culture, while perpetuating the ongoing degradation of the environment, its waters, and the Indigenous communities who inhabit them.

The representations of late liberalism and its settler subjectification in Kelly's novel is best illustrated through the narrator's engagement with the environment, and with the Indigenous peoples, and the lands and waters that he moves through. The type of environmental engagement expressed through the narrator in Kelly's narrative is indicative of a mode of nationalist environmental discourse that trades on an interrelated process of both attributing value to certain environments, while justifying the destruction of others. Brian Black's 2000 text *Petrolia* offers a succinct explanation of this

interrelated process of meaning-making through his concepts of sacred and sacrificial landscapes. First, Black mobilizes the concept of the "sacrificial landscape" in relation to the late-nineteenth-century oil boom in northwestern Pennsylvania. He explains how certain landscapes achieve a mythic status developed through the interwoven narratives of divine economic and nationalist progress, and how such landscapes and communities have been sacrificed toward these idealized economic ends (81). Correspondingly, landscapes once sacrificed toward such ends could later become imbued with deeper cultural significance and made "sacred." Black's text focuses predominantly on the 19<sup>th</sup> century oil boom of Oil Creek Valley Pennsylvania, where the environment and community were ravaged toward the seeming prosperity of a burgeoning oil industry and national progress. Over a century later, the region has been memorialized in the American psyche and achieved a kind of sacred status for both its role in national growth and as a reminder of the limits and consequences of progress (Black 2000). Of sacred landscapes, Black writes, "[t]heir sacredness derives from one's ability to stand in the locale and reflect upon the action that took place there; however, it also grows out of the power of hindsight and one's ability to consider additionally all the related issues and ideas that have transpired throughout the nation" (170). Thus, according to Black, the sacrificial and the sacred landscape work relationally; landscapes must die, be sacrificed, so that the nation's progress may flourish, and, in turn, become sacred, so that the nation can subsume past violence, sanctifying landscapes and the violence inflicted on them within an ever-progressing national narrative. Nuancing Black's notion of the sacred and sacrificial, I contend under a late liberal politics of recognition in the settler colonial nation state, rather than a progressive movement of sacrificing lands and then imbuing

them with notions of the sacred, the sanctification and sacrifice of certain landscapes, their inhabitants, and the cultures that they sustain, occurs almost simultaneously and perpetually in order to manage those populations, while justifying their ongoing dispossession. The settler protagonist in a *Dream Like Mine* embodies this dual process of sacrifice and sanctification, illustrating the subjective dynamics that comprise and contribute to late liberal governance structures. Kelly's narrative thus helps to illustrate this complex relational process of sanctity and sacrifice, and its entanglement with Indigenous presence, environmental justice, and water rights under the constraints of late liberal governance.

In *A Dream Like Mine*, the effects of mercury pollution in the waterways of a fictionalized northwestern Ontario Ojibway community are represented through the complex interplay of violence and the romanticising of Indigenous culture by way of a journalist's surreal experiences moving through the community's polluted landscape. Kelly's narrative offers a complicated telling of how Canada's Indigenous landscapes and corresponding communities are sacrificed in the name of nationalist interests and an ever-increasing drive toward progress. However, where Black's framework suggests that the sacred landscape will follow in the midst of sacrificed Indigenous territories, instilling these lands with a sanctified national mythology, Kelly's narrative illustrates how within the settler-liberal context, the persistent presence of the landscapes' Indigenous population demands a kind of ongoing sanctification of Indigenous peoples and their culture in order to allay the perpetual violence inflicted upon their territories. This ongoing liberal sanctification of limited conceptions of Indigenous peoples and their relationships to land ensures the management of Indigenous political claims for

environmental justice, while maintaining the conditions for the ongoing sacrifice of Indigenous lands and waters. To put this another way, while the mercury pollution of the Ojibway community (the fictionalized and the real Anishinaabeg of Treaty 3) certainly signals a landscape sacrificed toward the ends of national progress and capital accumulation, the ongoing presence of the Anishinaabeg inhabiting these lands complicates the finality of this sacrifice. Their presence ensures that the sacrificed lands cannot be subsumed into the national mythology and made sacred as a symbol of progress. Rather than rupture the settler colonial logics that allow Indigenous lands to be sacrificed toward national progress, late liberal modes of governance manage Indigenous claims for justice, sanctifying Indigenous presence through limited forms of cultural recognition. This process of sanctification celebrates limited conceptions of Indigenous culture while ensuring that the material conditions allowing for the ongoing sacrificing of Indigenous lands and waters are never altered.

The novel's unnamed narrator represents this process of sanctification, imbuing Indigenous peoples, culture, lands, and waters with notions of a liberal sacredness toward the regeneration of his own settler subjectivity—notably one which effectively writes over any sense of what the sacred might mean from an Indigenous perspective. Early in the novel, the narrator reflects on his romanticized notions of indigeneity: “my fascination with Indian culture, was both an obsession and an escape, the equivalent of some people’s addiction to science fiction, or fantasy, or mystery novels”; he continues, “But behind it there was a search for a way out, a different way of life” (Kelly, 44). Through this language the narrator figures a process through which Indigenous peoples,

cultures, and lands are framed in mythical terms by a settler modernity that requires an Indigenous Other in order to persist.

The Indigenous ‘other’ has been a trope of Canadian literary production since its inception, and has manifested and been mobilized in different ways in Canadian literature over time. Kelly, in his ironic situating of his narrator’s predilections toward the romanticizing of Indigenous culture as a mythical other, draws on this long Canadian literary history; specifically, his narrative is enmeshed in what has been identified in recent Canada literary criticism as the “postcolonial Gothic” (Sugars and Turcotte 2009). In the introduction to their edited collection, *Unsettled Remains*, Sugars and Turcotte suggest that a Canadian postcolonial gothic centres around “an aura of unresolved and unbroachable “guilt,” as though the colonial/historical foundations of the nation have not been thoroughly assimilated” (ix). They situate the postcolonial gothic in relation to earlier iterations of Canadian gothic literature, writing,

If early instances of the Gothic in Canadian literature, as in John Richardson’s 1832 novel *Wacousta*, were concerned with terror in the face of the unknown wilderness (see Hurley 1992; Turcotte 2009), a more recent strain of gothic literature in Canada has been less preoccupied with an overtly externalized and alien sense of gothic otherness that is “out there” and more concerned with an interiorized psychological experience of gothic “uncanniness” and illegitimacy. (xi)

The gothic uncanniness internalized in this postcolonial formation hinges on Freud’s formulation of the paradoxical relation between “home” and “unhomeliness” in order to emphasize a concern with territorial dispossession and inauthenticity—the struggle of being ‘at home’ on Indigenous lands. Sugars and Turcotte elaborate: “When the uncanny is combined with the gothic, elements of the supernatural, the monstrous, or the paranormal are foregrounded” (ix); they continue, “When these are conjoined with the

postcolonial, it takes a variety of possible tacks: fears of territorial illegitimacy, anxiety about forgotten or occluded histories, resentment towards flawed or complicit ancestors, assertions of Aboriginal priority, explorations of hybrid cultural forms, and interrogations of national belonging and citizenship” (ix). Kelly’s narrator embodies, enacts, or projects almost every single one of these approaches, representing his internalized illegitimacy on the Ojibway’s territories; however, where Sugars and Turcotte stop short of addressing the socio-political and historical context of the post-colonial gothic in a way that is cognizant of different regimes of governance, Kelly’s settler protagonist demonstrates how a settler illegitimacy crisis plays out under and within a late liberal governance structures in ways that romanticize, co-opt, and actively undermine Indigenous rights.

This “postcolonial” illegitimacy crisis plays out through the narrator’s attempts to sanctify the Indigenous community and their lands, instilling them with romantic and essentialist notions of tradition, cultural practice, and ceremony, while sacrificing the actual politics and lived-experiences of its people within a polluted landscape. While the narrator expresses his concern for the community’s fight for environmental justice, he perpetuates a mode of environmentalism that Agyeman et al. suggest “appropriate[s] Aboriginality as an exemplar of environmental praxis” (2010, 16). The narrator appropriates the ‘aboriginality’ of the Ojibway community initially through his romanticized desire for traditional canoes trips and sweat ceremonies as modes of environmental engagement, and later through his alignment with Arthur’s extreme environmental activism, viewing his violent journey ultimately as a kind of vision quest. This kind of environmental support, represented in the novel through registers both romantic and violent, Agyeman et al assert, “does not necessarily extend to campaigns

for land claims, treaty rights, or economic development, thus undermining cultural and social justice for Aboriginal peoples” (16). Through his conceptualizing of the Indigenous culture in the community as a kind of sacred practice, one which aims to abstract the Indigenous characters from the lived-reality of their polluted environment, the narrator occludes the root causes of the ongoing violence inflicted on Indigenous lands, and ensures that his own liberal sense of environmental justice and settler subjectivity will prevail. This is to say that the narration dramatizes a liberal subject position in order to produce an ironic critique; the narrator is written as a self-conscious settler subject, imbued with the markers of the postcolonial Gothic, grasping at limited notions of Indigenous culture, as his internalized guilt and liberal sensibilities are presented first as the cause of his eventual downfall, and then, in terms that must also be read as ironic, as the basis for his settler regeneration. The narrator perceives the Indigenous community as a “living myth” (21), with the Indigenous people he encounters expected to reflect his own desires for untouched pristine landscapes, and offer him a “sense of the past” that he no longer has access to (22). The ironic portrayal of both the narrator’s liberal desires and of indigeneity itself work to illustrate how the narrator’s sanctification of the landscape and its Indigenous inhabitants are to be read as complicit in the ongoing sacrificing of the Indigenous community, their politics, and their claims for justice.

The narrator’s liberal desires are presented with derision from the very beginning of the novel, reflected primarily through the character of Arthur, who disrupts and challenges every preconceived notion of indigeneity that the narrator possesses. The transition from the narrator’s expectation of a romantic victimized indigeneity to that of

political activist is best represented by Arthur, and his political will to seek retribution for the pollution inflicted on the Ojibway community's waterway by the local Dryden paper mill. First described as unfriendly and menacing, and later as a psychopath, Arthur is, initially, the antithesis of everything that the white liberal narrator desires from Indigenous culture. Upon meeting Arthur, and hearing his proclamation that the businessmen behind the paper mill's pollution are "scum" and "human shit," the narrator's stereotyped notion of indigeneity is unsettled, as Arthur's impassioned political stance is contrasted with the quiet understanding that the narrator has come to expect from his Indigenous hosts. Following this unpleasant introduction, the narrator embarks on a fishing trip up the reserve's waterways, intended to be a traditional tour of the sacred Indigenous landscape by the Elder Wilf. Through the novel's persistent trips along the waterways and into the wilderness of the Ojibway community, Kelly offers a kind ironic Canadian version of Joseph Conrad's famous novella, *Heart of Darkness*. Where Marlow travels up the Congo River in search of Kurtz who has descended into madness—"gone native" as the novella dramatizes him—Kelly's narrator rides shotgun with an increasingly mad "native" in the character of Arthur. Both texts provide the protagonists with paradoxical characters that allow them to evaluate themselves and their relation to their (settler)colonial situations. More on this below.

On this initial tour of the Ojibway waterways, the narrator is once again confronted by Arthur's crassness. The narrator probes Arthur on where he's from and his inability to speak his Indigenous language, challenging his authenticity as an Indigenous person. Arthur responds with vitriol: "You wanna know where I'm from? I'm from where little wee kids have impetigo and cooties and where their teeth are rotten in the goddamn

day-care because they eat nothing but pop and candy at home where the old lady's always out on a party. Where lots of kids under twelve get fucked and have clap" (26). The narrator's romantic sensibilities are shattered by Arthur's frankness and unlikeability, as his desired version of indigeneity is confronted by the lived realities of a complicated, politicized Indigenous subject. Here, Arthur insists on the inseparability of social conditions from so-called environmental ones, refusing the abstraction of people from the environment—an abstraction that is so integral to the narrator's sacred conception of the landscape. Arthur serves initially as the marker of the ironic mode through which the narrator is to be read, and later as the site where Kelly's ironic critique of settler liberalism culminates.

Arthur quickly becomes the narrative's violent antagonist, abruptly kidnapping both the narrator and the manager of the company responsible for the polluted waterway, Bud Rickets. Resisting the narrator's pleas for moderation, and gesturing to the ways in which the narrator's own journalistic inquiry and romantic idealization of Indigenous peoples is complicit in the environmental degradation facing the community, Arthur asserts, "We're through with reports and opinions and the oh so reassuring experts who let it happen and happen and happen" (49); he proclaims without reservation: "I'm going to kidnap and kill the manager of Spruce Lands Paper unless they stop the pollution RIGHT NOW" (50)! The narrative descends into a strange and violent journey as Arthur becomes the narrator's new Indigenous tour guide, this time of an uncanny and polluted landscape. He forces the narrator and Rickets into the wilderness along the polluted waterway, that which has been sacrificed on behalf of the region's, and indeed the nation's, pulp and paper industry. Notably, this is an industry also represented through

the narrator's profession as a print journalist, further signalling the banality of the roots of the kind of violence inflicted on the Ojibway community along with the circularity of this violence (mercury produces paper, paper is utilized in print culture, which in its romanticizing of Indigenous issues, detracts from, trivializes, disempowers, and incorporates Indigenous resistance; mercury pollutes the Indigenous waterways, and is also a key by-product of the paper used to write about the pollution of Indigenous waterways). The narrator is repeatedly beaten, and Ricketts is tortured, his eye almost gouged out and his Achilles heel severed by Arthur. All the while, the narrator pleads with Arthur to seek recourse for the sacrificed landscape through law, at once reinforcing both his own liberal sense of justice and the sovereign state's authority that perpetuates and prospers from the sacrifice of the Indigenous landscape.

While the narrator's attempts to reason with Arthur persist throughout their journey, the novel's critique of the kind of liberal justice that the narrator appeals to is taken to its limit when Arthur callously kills two Mounties they encounter deep in the wilderness. As the Mounties are shot and fall at his feet, the narrator reflects, "Both these young men, whatever they had thought of me, whatever I saw in them, were finished" (113). Turning to Wilf, in shock, the narrator asks, "What did they do" (113)? Wilf responds, "*They* didn't do anything. . . . But so many of them did so much" (113). In disbelief at Wilf's justification, the narrator probes further, "They were just as much victims as you. Did those poor jerks hand out blankets full of smallpox? Were those the ones who broke into your house?" Wilf replies, "They did once. And their ancestors did many times." Responding in disgust, the narrator proclaims, "Oh Christ! Those unsuspecting buggers. They didn't pollute any goddamn river." Wilf, articulating the

stakes of the environmental situation facing their community in terms that the narrator has been unable to reckon with, responds, “They protect those who do” (113). That these two unsuspecting Mounties should be held accountable for not only the pollution of the river, but for the biological warfare inflicted upon Indigenous peoples through the spread of smallpox via infected blankets in the 18<sup>th</sup> century is depicted as shocking to the narrator. That they be held accountable for the more simple fact that they uphold the rule of law allowing for the ongoing pollution of the Ojibway community’s waterways puts an end to the narrator’s demands for justification. The murder of the Mounties is no doubt intended to be shocking to readers of Kelly’s novel as well. While it is unlikely that Kelly expects his reader to identify with Wilf’s justifications for their murder in this scene, his response raises important questions about the limits of recourse to liberal forms of justice in the wake of environmental disasters affecting Indigenous communities. Indeed, the murder of the Mounties offers a kind of sacrifice of a powerful symbol of historical Canadian colonialism and contemporary liberal justice. Even if the scene is to be read as shocking and disturbing, it dramatizes an inversion of the more familiar sacrifice of the Indigenous. Taken together with Arthur’s torturing of Bud Rickets, this scene raises difficult questions about the dualism of sanctity and sacrifice that Canadian national mythology and ongoing colonial violence often hinges upon.

This inversion of Canadian mythology and its logics of sanctity and sacrifice play out again through the novel’s referencing of Jean de Brébeuf. Indeed, it is difficult to not view the torture and torment of Rickets throughout the novel as an allusion to Jean de Brébeuf, given Arthur’s antagonistic retelling of Brébeuf’s death earlier in the narrative. When asked if he knew about “Father Brébeuf,” the narrator recalls visiting Brébeuf’s

grave at the French Jesuit settlement, St. Marie Among the Hurons, and says that he has heard “the Jesuit relations are the basis, or backdrop, for most of our literature” (37). Once again implicating the pulp and paper industry, and the literary institutions that rely on it, Arthur responds by deriding white Canadian literature, as the narrative also incorporates criticism of the enterprise of Canadian literary history— that which it is of course apart of—revealing again the ironic critique that Kelly aims to achieve through the dramatization of his liberal settler narrator’s blindness and his settler Canadian baggage. Arthur suggests instead that Brébeuf was killed in Mississippi by the Sioux, for the crime of “what he was doing to young girls” (37). While unclear if Arthur believes in his own retelling, his narrative refuses the romantic martyrdom of Brébeuf, which so resolutely situates his torture by the Haudenosuancee as a sacrifice, both literally and figuratively—a sacrifice which leads to Brébeuf’s sanctification, to sainthood, and, through its retelling within a tradition of Canadian literature, provides the affective structures to sanctify settler presence, and in turn, justify the continued sacrifice of Indigenous peoples and the lands they inhabit. Ricketts’ torture forces the question of whether he will endure the same bloody sacrifice that Arthur treats with so much skepticism; but to sacrifice Ricketts would risk making a martyr out of him as well, sanctifying settler presence in a fashion similar to Brébeuf’s torture. Ultimately, the sacrifice of Ricketts does not occur, seemingly refusing the sanctification of settler presence embodied here by Ricketts and his liberal enterprising ideologies. Instead, as I will discuss further below, Arthur is ultimately the one who is sacrificed, and with him, his radical politics and violent response to settler colonial ordering as liberalism and late liberalism.

In his criticism of Joseph Boyden's *The Orenda*, which itself heavily references the torture of Brébeuf as portrayed through the *Jesuit Relations*, Anishinaabe scholar Hayden King suggests that familiar tellings of Brébeuf's martyrdom situate Indigenous peoples as, "a menace, lurking in the dark forest, waiting to torture or cannibalize" (King 2014). Further, King suggests that such neat tellings of sacrifice and sanctification work as a moral alibi for colonialism. Arthur's actions almost caricature the implication of stories like Brébeuf's. His violence and torture are read as meaningless by the narrator, while his refusal to ultimately make a martyr out of Ricket's complicates the sanctify-sacrifice process, undermining the settler logics of possession that might work to naturalize settler presence through pre-ordained narratives of consecration and tired tropes of savage Indians. Arthur's telling renders Brébeuf's story meaningless within the common national lexicon, while correspondingly ensuring that his torture of Ricket's does not serve as a moral alibi for continued processes of colonialism. The historical torture and the contemporary one are denied meaning here, and must instead be read, however complicatedly, as responses by Indigenous peoples for very specific colonial incursions, rather than as consecrated national symbols justifying ongoing colonial dispossession. This treatment of such national mythology should be read as radically unsettling to the sacred/sacrifice dualism that attempts to give meaning to the violence of settler colonialism.

Similar ironic critiques persist throughout the novel. While the narrative risks reducing the politics of this semi-fictionalized Ojibway community to the violent actions of one potentially unwell and ambiguously identified Indigenous outsider, I read these moments less for what they are able to articulate about Indigenous experience or

subjectivity—which is arguably very little—and instead for what these self-conscious instances articulate about settler-colonialism in relation to Canadian environmental discourse. The narrative offers countless moments where the narrator’s romanticism and so-called good intentions return to haunt him, upended and denied sublimation. As they journey down the river, Arthur proclaims to his captives, “I’m going to take you on a traditional trip, and we’ll have a traditional shore lunch, the kind Indians always make for tourists, with a mess of mercury ripe fish, except Indians have to eat the fish all the time, not just on trips.” (70). The narrator’s earlier desire for his traditional canoe trip with Wilf is mimicked and inverted to reflect the actual reality of that which is negated through settler consumption of Indigenous traditions. Further, Wilf, whom the narrator had previously misread as a kind of wise Elder ally, fully supports Arthur on his violently retributive journey, seeing it as the only means to right the wrongs done to his community. Wilf’s transition is presented in direct opposition to the narrator’s sense of how wrongs might be righted through idealizing representations and settler-sanctifying recognitions. Arthur and Wilf both resist the logics of a late liberal politics of recognition that the narrator embodies; their actions push against the “discursive and ideological constraints on the forms of expression through which it is possible to win dignity, or the sympathetic identification of others,” to draw from Henderson (2013, 75). Through Arthur’s persistent derision, and through the abrupt change in the presumed character of Wilf, Kelly suggests that it is the settler-narrator’s attempted sanctification of a romanticized Indigenous landscape and culture that makes him complicit in the ongoing sacrifice of the community—a process which trades in a long history of affective

structures of sacrifice and sanctification, perpetuated and naturalized through stories like Brébeuf's.

One of only two long-form critical engagements with *A Dream Like Mine*, J.A. Wainwright's "Invention Denied: Resisting the Imaginary Indian in M.T. Kelly's *A Dream Like Mine*," looks to the productive socio-political potential of the novel, particularly through "praising Kelly's refusal to operate within existing paradigms in his construction of Native characters" (Langston 2012, 182). Wainwright suggests that because the reader is not "allowed to fix on [any] positioning" of the Indigenous characters in the text, *A Dream Like Mine* contains a "deprivileging" of "all previous texts that categorize Native people" (1999, 258). Through this narrative refusal, Wainwright asserts that the novel "demands that we consider the inevitable and vital conflation of cultural and violent resistance to racist stereotypes and power-based inequities" (257). I follow Wainwright in identifying a core commitment of the novel as the undercutting of the settler-colonial romanticization and categorization of Indigenous peoples and their expected modes of resistance. The deflated, unromantic representation of indigeneity in the novel ensures that a recognition-based politics does not come easily to the narrator, nor the novel's audience. The narrator's desires for preconceived notions of indigeneity are consistently turned on their head; but rather than gesture toward a more effective settler mode of engagement with Indigenous political resistance, the complicated character of Arthur and his abhorrent actions often resist any kind of settler-reader identification with a clichéd or essentialized notion of the Indigenous. The novel presents the settler desire for a sacred landscape, one comprised of Indigenous wilderness, traditional canoe trips, and sweat ceremonies, and then refuses it, illustrating

the manner in which this desire for the sanctified itself becomes complicit in the sacrificing of the Indigenous landscape and community.

The narrator demonstrates this denied desire, with his liberal sensibilities persistently under attack and presented as part of the root cause of the Ojibway community's inability to achieve justice. In an attempt to sympathize with Arthur's motives, the narrator says, "Look, I'm not unsympathetic. I'm on your side. Pollution may have killed children of mine. My wife has had two miscarriages, for no reason . . . Do you know how many women are having miscarriages now? Nobody can explain them. I'm sure it's pollution. It's got to be all the chemicals around. Everyone's affected" (49). Arthur responds, deriding the narrator's universalizing move to uphold his own settler identity in relation to a decidedly Indigenous struggle: "Oh a real family man eh. . . Yeah. I'm sure you have the right opinion. Well we're through with opinions." And then, in a mocking tone that the narrator identifies as the "clichéd, effeminate tone people use when they say things like bleeding-heart liberal," Arthur says, "We're through with 'pollution'" (49). Words like "sympathy," "opinions," and "pollution" are part of so many empty liberal catch-alls for Arthur, marking the negation of a people and their particular place-based politics. Further, the narrator's concerns express a desire for a futurity, one that Arthur views as an entitlement to a future that has been denied to the Indigenous community. In *Slow Violence*, Nixon asserts, "Violence, above all environmental violence, needs to be seen—and deeply considered—as a contest not only over space, or bodies, or labor, or resources, but also over time" (2011, 8). The narrator's attempt to associate with Arthur's stance based on his own potential inability to procreate is presented in the novel as a strategy by the narrator to assert that he and Arthur are on

even ground, that they want the same thing: a future. But of course, and as Arthur makes clear, this is a future of which the Indigenous community is actively dispossessed; this is a future denied through broken treaties, Indian policy, and a forward-looking global capitalism that extracts resources from Indigenous communities toward national futurity while inflicting upon Indigenous peoples, their lands and waters, what Nixon calls “slow violence,” the results of which are the “long dyings—the staggered and staggeringly discounted casualties, both human and ecological” (2).

Nancy Fraser suggests that liberal politics are sustained through affirmative, rather than transformative, models of redistribution, which “strive to alter or modify the second-order effects of first-order root causes” (qtd. in Coulthard 2014, 19). Within the Canadian colonial context, following Glen Coulthard, a liberal politics of recognition makes it impossible to address the “generative material conditions” that maintain the status quo and allow the sacrificial landscape to persist. The narrator represents this mode of liberal environmentalism, as his interests and sympathies lie not in addressing the unjust distribution of power and resources that would see some communities sacrificed for the sake of others, but in his desperate attempt to suggest how the second-hand effects are experienced by all of us—how pollution is something that we can all relate to. His goal is to highlight how we experience all of these effects equally, and thus to mark Arthur’s actions as irrational and unjust within his liberal sense of justice that seeks resolution in the same processes that perpetuate the very violently oppressive conditions under which Indigenous communities are persistently subjected to .

Thus, the narrator’s inclusion on Arthur’s terrifying journey illustrates how the sacrificing of the landscape must be understood as part of a dense network of political

actors and actions. The narrator's liberal sentiments, those which flatten out oppression and structural inequalities, and which attempt to make space for idealized but limited cultural difference within liberalism, but only "without rupturing the core frameworks of liberal justice" (2011, 26), to draw again from Povinelli, become complicit in the sacrificing of the Indigenous landscape and community. Through this late liberal mode of sanctification of the landscape and its people, the actual Indigenous community has been hollowed out, made absent, with space only for limited forms of cultural recognition left in its place. The settler-sanctification of the landscape can be understood as a move to vacate a real landscape and its real inhabitants, imbuing the land with a clichéd and empty sanctity toward the ends of settler regeneration and national progress. As I will discuss further below, we see the ironic culmination of this process in the death of Arthur and the regeneration of the settler protagonist through his new-found political awareness; despite the narrator's sympathies toward the plight of the Indigenous community throughout, the poisoning of the community is given significance only in so far as the narrator is able to survive his journey and reflect upon the events that transpired. The Indigenous characters are killed off, incarcerated, or left in a polluted landscape that has been sanctified toward the ends of a settler futurity that requires their sacrifice in order to persist. As I will show in the section that follows, water plays a particular role in the narrator's move toward settler regeneration, leading us back to the political situation facing the waters of Grassy Narrows and Wabaseemoong.

*Water and Fluidity in a Settler-Liberal Landscape*

By the novel's conclusion, Kelly's ironic critique is carried to its fruition, offering a portrait of settler liberal desire and its effects on Indigenous environmental justice. The move to ultimately sacrifice the novel's Indigenous antagonist, Arthur, returning him to the waters from which he apparently came, as I'll explore further below, along with the narrative's limiting representations of Indigenous peoples—those which should be read solely as a product of the settler narrator's liberal desires and anxieties—get at the root of a late liberal politics of recognition and its relation to Indigenous environmental justice and water rights. To be sure, water becomes the site where both the political limits and insidious nature of late liberalism are made most apparent. By sacrificing Arthur and his radical politics of Indigenous resistance in the polluted waters of the Ojibway community, the novel ultimately offers a portrait of a settler subject regenerated through his troubling journey along the Indigenous waterways. In focusing on the representation of water in the narrative, I assert that the novel's ironic dramatization of the narrator's engagement with the waters he travels reveals water's function under settler liberalism as little more than a metaphor for settler regeneration and futurity; where water is presented as the site of Indigenous political struggle that the narrator claims to be aligned with, it ironically comes to represent only a metaphoric mirror of settler identity and the means for settler regeneration. Further, Kelly's representation of water in the text also raises important questions about the fluid nature of late liberal governance and its adaptive responses to environmental injustice in Indigenous communities, responses that at once

lament the effects of uneven environmental degradation and reinscribe the very conditions under which such effects occur.

With the Indigenous community's waterway, and more specifically, its pollution, as the catalyst behind the violent events that take place throughout *A Dream Like Mine*, the river system plays a complex role in the articulation of settler liberal identity. The river serves as both the means through which the narrator seeks reinforcement of his mythic, sanctified view of Indigenous culture, as well the site of the violent refusal of this so-called "living myth." Its waters offers a reflection of the limits of his romanticized notions, and is the means of encounter with a violent indigeneity that stands in opposition to his liberal sentiments. In dramatizing these tensions, and carrying forward the ironic critique of settler liberalism, however, the river ultimately operates as the path to settler regeneration for Kelly's narrator. Its pollution and the narrator's journey along it, serve as the means through which the narrator reckons with his own liberalism, and with the limits of his liberal critique by the novel's conclusion, finally providing the means for a kind of political catharsis for the narrator. Where the river for Moodie in "Canadian Sketches" is productive so long as it can be contained and managed, for Kelly's narrator, the river is productive in its unwieldiness—in its ability to take him places outside of the settler social order, without actually disrupting the perpetuation of settler sovereign power. In both instances—for Moodie and for Kelly's narrator—the river works to perpetuate settler futurity, wherein water is understood only in relation to and toward the establishment and perpetuation of settler presence, which takes precedence over any relation to the water's complex materiality—its significance for Indigenous communities or its pollution as a consequence of settler colonial progress and development.

In his initial trip along the river with the Elder Wilf and Arthur, the narrator is shown significant sites along its banks, including Wilf's "church" where he had gone on a vision quest. The narrator responds with an attempt to map out and possess Wilf's sacred grounds: "I was guilty at the shiver of pleasure I'd felt in finding out the name of a special place. Would I go to that hidden, secret meadow alone? Would I show it off, the prayer flags vulnerable, fluttering in the silence. Already I'd marked the peninsula on a map. Knowing about it was a little like stealing it" (32). But as discussed above, the narrator's subsequent journeys down the river are chaos, making these initial thoughts only a set up for denied settler desire. With Arthur at the helm, their travel by canoe through the community's water system reads as geographically illogical. They almost never travel to anywhere specific, ending up where they began, only to set out again down the river. There is no mapping or management possible for the narrator in these instances. And yet the river is most productive for Kelly's sense of irony when it resembles an unruly and expansive water system, rather than when it is ordered and contained as in Moodie's text. The river, through its unwieldiness, instead becomes the means of illustrating the damage of the settler colonial imposition on the landscape and the limits of settler liberal politics that seek to incorporate narrow conceptions of indigeneity toward the preservation of settler structures of power. Even as the river they travel serves to highlight the consequences of settler incursions and limited modes of liberal engagement, however, the waters ultimately symbolize the site of Indigenous death and settler futurity, consummating Kelly's ironic critique wherein even the narrator's achievement of a deeper political awareness fulfills the sacrificing of Indigenous lands and communities.

The sentiments of Arthur and Wilf toward the river are consistently juxtaposed with those of the mill manager's. Where Ricketts proclaims that the *paper mill* is the "lifeblood of [the] community" (69), Wilf, echoing the sentiments of the actual Chief of Grassy Narrows, Simon Fobister Sr., quoted above, asserts simply, "The rivers are our blood" (132). Ricketts views the river in terms of job creation and opportunity for Indigenous communities, where Arthur sees it in its current state as poisoned and destroyed, citing birth defects and mercury poisoning at Grassy Narrows. For Ricketts, there is no flowing river, but only "money poured into the reserve" (90). Arthur's response to Ricketts' position is clear: "I want you to stop poisoning the river . . . And I wish Indian people would stop getting destroyed" (77). Illustrated through these interactions is a disconnection between what the river means for the Indigenous community, and what it means for Western capitalism and its proponents like Bud Ricketts. Like Moodie, and his early possessive logics of settler colonialism, Ricketts' rhetoric removes nature from culture, and, to draw from geographer Bruce Braun, "relocates it in the abstract spaces of the market" (1997, 3). Ricketts is the obvious colonist in these interactions, with the narrator persistently attempting to disassociate himself from what Ricketts represents: the embodiment of settler colonial free market capitalism, its logics defended even in the wake of the poisoning of a community.

While these contrasting viewpoints of the river are straightforward enough, the narrator's perspective, and the larger narrative of the text remain complicated within the fluid terrain of settler liberalism. While he is disgusted with Arthur throughout, and certainly critical of his actions, the narrator also shows sympathy for Arthur's position against Ricketts in various moments. He goes as far as imagining himself doing as Arthur

has done; in a state of delirium brought on by his deprivation and abuse, one that he likens to that of a 'native vision,' the narrator recalls how often he "tossed in bed at night and railed against businessmen who looked like [Rickets] and fantacized about punishing them and torturing them and killing them for what they had done" (109). Rickets accuses the narrator of being involved in his kidnapping, and the narrator is even charged with the attempted murder of Rickets once the ordeal has ended—this despite the narrator's consistent perspective that he too was kidnapped by Arthur. While he never fully aligns with Arthur, and is subjected to much of the same torment that Rickets receives, by the end of the novel, it is unclear what exactly the narrator's role in the kidnapping and torture had been. Rickets is released down the river and eventually rescued, while Arthur ultimately goes back into the river from where he came, seemingly drowning himself. This obscuring of the narrator's role in the events that took place, along with the figurative collapsing of Arthur into the river, illustrate a fluidity of liberal politics that at once incorporates Indigenous resistance into a seemingly progressive political stance, while also ensuring that the material conditions which have allowed the settler subject to persist, and the Indigenous subject to ultimately be destroyed, remain unaltered.

While the narrator views much of Arthur's actions and their journey down the river as deplorable, the narrative's conclusion suggests that everything that has happened took place in order to further the settler narrator's political awareness, almost as if by prophecy. Wilf tells the narrator, "This man Arthur, he had to come. There were two, before. They drowned, and called him up from deep water" (140). Even more pointedly, when confronted about his actions in the final moments before drowning himself in the river, Arthur tells the narrator, "I did it because you wanted me to ... That's what you

expected” (146). The narrator responds with a simple “Yes,” “realizing he was right” (148). Arthur’s actions are thus situated, ultimately, as necessary, and as that which the narrator required to provide catharsis for his settler liberal desires. Where the narrator’s liberal critiques are presented with constant derision, he ultimately achieves a moral and political renewal, ironically fulfilled by Arthur, the Indigenous political activist, but notably, only in his death. While Arthur’s return to the water completes the prophecy outlined by Wilf, the novel’s conclusion reads more accurately as a prophecy of white liberal regeneration. Arthur facilitates the narrator’s movement beyond his comfortable liberal modes of critique allowing for the enactment of violence on the crassest manifestation of his liberal politics, embodied through the punishment dealt to Rickets. Once these actions have taken place, Arthur returns to the water from whence he came and the narrator returns to his life having learned something important about the limits of his former political position. Notably, both Rickets and the narrator survive, while the Indigenous political activist is sacrificed in order to illustrate the cumulative implications of various manifestations of Western liberal politics.

The narrator’s achievement of a seemingly radical politics in relation to Indigenous environmental rights can be read as a kind of ironic totem transfer narrative that works to reveal the fullness of Kelly’s ironic dramatization of late liberal subjectification. Drawing on Margery Fee’s discussion of “totem transfer narratives” in settler literature, Dallas Hunt writes,

In these stories, white settlers leave the chaotic and restrictive confines of the city and flee to the idyllic and enlightening expanses of the rural or natural world. Here, without fail, these white settlers encounter one or several of the last remaining members of a “forgotten tribe” indigenous to the area. Much is made of this interaction; much is learned. During this learning process, a transaction occurs whereby the white settler characters are given an object, ranging from a

ceremonial token, to a weapon, to livestock such as a horse. Immediately after giving this gift, the Indigenous character wanders off never to be seen again, either walking off into the forest or, in some cases, heading to the grave. (2016, n.p.)

The totem transferred in *A Dream Like Mine* is the brief foray into radical environmental politics that the narrator accesses through Arthur. While not always idyllic, water facilitates this transfer: through the outrage elicited over its pollution, through the several journeys along its surface, the progress in intensity of Arthur's actions and the dramatized limits of late liberal politics, the narrator's political awareness, and finally, through the disappearance of Arthur who cannot remain given the extremity of his politics and actions. The narrator is left with newly acquired knowledge of the limits of his political perspective, while getting to briefly step outside of the confines of the settler social order through his politicized Indigenous avatar. Ironically, the waters through which the narrator comes to understand the necessity of Arthur's violent intervention into the pollution of the Indigenous community, those which reveal the limits of the narrator's liberal political responses, are the same waters in which the Indigenous character is drowned.

Kelly thus concludes his novel by ensuring that even this move toward settler regeneration is to be read through critical irony, illustrating that this is primarily a novel not about Indigenous rights, resistance, or environmentalism, but about the settler subject's perpetuation of environmental destruction in Indigenous communities under the conditions of late liberalism. Toward the end of his journey with Arthur, the narrator articulates his seemingly newfound relationship with the environment. This understanding occurs by way of a vision and warrants quoting in full:

Finally I saw my own home, then the great flat silver plain of Lake Ontario, near which I grew up. Ontario, the Beautiful Lake of the Iroquois. That lake had been dead so long, all my life, flat and shining and empty and grey. . . . I knew clearly how the lake had been killed, how the life in it, the water, was changed into something inert, sterile. So much emptiness. I saw only metallic colours, sky and water, a horizon from childhood, and heard the words from a hundred-and-fifty-year-old journal. These words, semi-literate, poorly spelled, deeply felt, described what was still going on: "... in the running waters the salmon trout whitefish sturgeon herring pike and pickerel — and many more kinds live in the great water, the mullets and suckers the beautiful little speckle trout Eels run up the Creeks and also, men contrive schemes and plans even to draw them out of deep waters, and the poor fish, like the Natives of Aborigines, are fast diminishing for which I sorrowe." (99-100)

The journal that the narrator quotes from here is that of Timothy Rogers, a Quaker leader involved in an early 19<sup>th</sup> century settlement of Yonge Street that would eventually become the town of New Market (Densmore & Schrauwers 2000). Through this vision the narrator is connected to the perceived desecration of Lake Ontario near his own home in Toronto, along with the long history of poorly devised plans to develop its aqua systems and its effects on the ecosystem and communities that rely on them. Further, through this reference to a 19<sup>th</sup> century settler of Upper Canada, the narrator's seeming achievement of a new environmental awareness, his assumption of political progress, is disrupted by the historical precedence of a settler ancestor who "sorrowes" for environmental destruction in his own time. While the narrator seeks a kind of Indigenous enlightenment, his vision instead connects him to his own ancestors, an environmental history and a lament that has seen little change in one hundred and fifty years. Kelly's transhistoricism here serves to bridge the liberal politics of his narrator to the liberal order of the 19<sup>th</sup> century, illustrating how the kind of late liberal politics of recognition that the narrator has embodied does little to address the material conditions established in the liberal ordering of 19<sup>th</sup> century Upper Canada. The narrator's ancestors here can be

thought of as Moodie and Traill—those who lamented the loss of fish and the damage done to the region’s watery ecosystems, and who sorrowed for the Indigenous inhabitants to various degrees, but whose actions and sentiments perpetuated the very conditions that they found to be so regrettable.

The novel offers an ironic image of settler liberal political fluidity as the narrator is able to move from his romanticized desires of indigeneity and his claims to liberal justice, to what he perceives as a new found awareness of the requirements for Indigenous political action, all without disrupting the material conditions that demand such action. Perhaps most ironically, the narrator’s movement through these political positions toward a better understanding of Indigenous environmental justice is facilitated by the death of the Indigenous; late liberal political fluidity thus offers the settler subject insight into a seemingly progressive political position, a new-found environmental awareness, while ensuring the very conditions that maintain the settler colonial status quo, and perpetuate the death of the Indigenous subject are not fundamentally altered. The narrator flows between his romanticized views of Indigenous peoples and the settler privileges he maintains; he flows between his sense of liberal justice and Arthur’s radical response, between “Indigenous understanding,” and back to his comfortable life in the city of Toronto, despite the traumatic events that have unfolded. Like the water represented throughout the text, the narrator and his politics are fluid, unwieldy, and ultimately abstracted from the real struggles facing the Ojibway community. Conversely, Arthur, his actions as a politicized Indigenous subject, those which facilitate the narrator’s fluidity, becomes fixed as a symbol of radical but unsustainable politics. Even despite Arthur’s advocacy for the particular situation facing Grassy Narrows, his

mobilization as the fulfillment of a prophecy for settler regeneration situates him as a transhistorical settler symbol of indigeneity—a phantasmic manifestation of the narrator’s desires and anxieties, and ultimately the means through which he is able to transcend them, however ironically. The narrator is mobile, transient, and fluid, while Arthur is relegated back into ‘deep water,’ part of a recurring prophecy, wherein Indigenous peoples “serve primarily as signposts and grave markers along the roads of empire” (Byrd, 6).

*A Dream Like Mine* thus illustrates a late liberal form of settler colonialism that is premised on its fluidity, rather than the kind of fixity present in Moodie’s earlier colonial rhetoric. Where such a politics of fluidity has been read as resistive by thinkers such as Deleuze and Guatarri and their account of the “rhizomatic west,”<sup>61</sup> Alex Young argues that celebration of fluid conceptions of the political elide the perpetuation of settler colonial frontier rhetoric. The privileging of that which is fluid, of “expansivity and openness,” and of Deleuze and Guatarri’s concept of ‘deterritorialization’ is part of the same frontier rhetoric that has always structured settler colonialism, argues Young; liberatory models that fail to reckon with these settler colonial processes risk “reproducing a discourse whereby an account of liberation is imagined at the expense of the indigenous peoples for whom settler colonial deterritorializations constitute a

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<sup>61</sup> The rhizomatic west is a concept explored by Deleuze and Guatarri in their texts *A Thousand Plateaus* and *Anti-Oedipus*. Premised on their concept of the rhizome, and a “body without organs,” Deleuze and Guatarri emphasize the fluid nature of capitalism, but also of resistance. In *Anti-Oedipus*, they suggest that capitalism is a desiring machine that shapes the construction of sociality. As such, these desires and their fluidity could also be mobilized in resistive ways, through common lines of flight, deterritorialization, and a frontier logic that would treat the idea of westward expansion as potentially rhizomatic, fluid, and not necessarily containable by the rigid social relations of capitalism. Several scholars in Indigenous Studies, including Alex Young and Jodi Byrd, have critiqued the popular uptake of Deleuze and Guatarri’s rhizomatic west, suggesting that the fluidity they emphasize and celebrate is the very fluidity that structures colonization of Indigenous lands.

coercive expression of sovereign power rather than an escape from it” (Young 2013, 123). Jodi Byrd further cautions against the resistive potential of such fluid assemblages:

The maps of settler colonialism were always already proliferative, the nation-state’s borders were always perforated, and the . . . lines of flight across the treaties with indigenous nations were always rhizomatic and fluid rather than hierarchical, linear, and coherent, located not just in the nation-state but within the individual settlers and arrivants who saw indigenous lands as profit, fortune, and equity. (2011, 13)

To put this another way, the narrative of *A Dream Like Mine* uses irony to dramatize the implications of a settler liberalism that is portrayed as mobile, through the narrator’s ability to traverse the polluted Indigenous landscape and emerge relatively unscathed; a settler liberalism that is adaptive, in the narrator’s capacity to learn from, briefly inhabit, but not give himself over to the radical Indigenous politics he encounters; and a settler liberalism that is deterritorialized, in that the actual environmental situation facing the Indigenous community is backgrounded to the narrator’s own process of regeneration. These representations of settler liberalism culminate to illustrate a mode of settler colonialism that is ultimately fluid, in that settler liberal politics remain a “moving target” to quote Povinelli, adapting to and adopting a political situation as a kind of restorative project for liberal governance, while ensuring the material and political conditions of settler colonialism, the same which are often the root cause of the political situation, remain fundamentally intact.

Ian Buchanan, alternatively, has countered the criticism of Deleuze and Guatarri’s philosophical underpinnings, suggesting that “insofar as we do not see their indubitably sexy terminology as the introduction of so many estrangements, we reduce it to either the merely descriptive, or worse, a kind of glossy repackaging of the social” (2000, 47).

Focusing particularly on Deleuze’s work, Buchanan asserts that it “needs to be

investigated for its figurative aims, not embraced for itself’ (74). For Buchanan, Deleuze’s notion of flow does not describe a social order such as settler colonialism, but rather figures a diverse set of processes that may become implicated in such social orders: “Nomad existence can be defined in terms of flow, as can capitalism, evolution and semiotics, such is the extension Deleuze is prepared to give to the term” (22). Processes of settler colonial expansion and its deterritorializations, or the enactment of fluid liberal politics in *A Dream Like Mine*, then, can be understood through the processes of flow in Deleuzian thought, but so too can flows that interrupt these very processes.

In this sense, I think what these alternative readings illustrate, and what this dissertation attempts to contend with throughout, is that notions of fluidity and flow, particularly as they relate to water and its representation, are processes that figure relations in both positive and negative ways. Water as material substance, as well as through its corresponding metaphors and abstractions, can carry pollution and settler colonial violence, as well as, as I will expand on in chapter three, Indigenous cultural knowledge, kinship relations, and political resurgence. In chapter one, water’s flow interrupts Moodie’s settler fixity, whereas with Kelly’s dramatization of late liberalism, fluidity figures the process of an insidiously adaptive governance structure and its subjectification on Indigenous lands; the fluidity represented and reflected in and through *A Dream Like Mines*’ mobilization of water works as a mirror of late liberal settler subjectification. This is a fluidity, or flow, that takes us further still from engagements with water that might begin to address the conditions that allow communities like Grassy Narrows and Wabaseemoong to bear the brunt of the effects of capital extraction and which actively obscure and make illegible their claims for justice.

The narrator in *A Dream Like Mine* incorporates the Indigenous subject so that settler liberal environmental politics can persist, despite their implication within the sacrificing of Indigenous politics, peoples, and landscapes. Arthur is subsumed and then sacrificed, returned to the polluted waters, so that the settler liberal narrator can come to better understand his relationship to water and pollution and cultivate a more politicized approach to settler environmentalism. Notably, aside from the narrator's own transformation, Arthur's actions are represented as having had little effect on the pollution of the community, and with the Indigenous activist drowned, the measure of justice is returned to the novel's presumably white settler readers. In the concluding pages, the narrator addresses the reader's sensibilities directly:

Nothing seemed to have changed because of what happened; the mill didn't put in any equipment to stop the flow of the effluent into the river. But there is more pressure on them now. And the government recently made a big financial settlement with some of the affected bands around Kenora. Whether it had anything to do with the insane dark magic that took place in the woods, the specific vengeance and torture, I leave up to you. (153)

While many critical readings seem to have missed the extension of the narrative's irony into the novel's conclusion, this concluding address ironically implicates the reader in taking a position on the actions they have witnessed. The opinions of the predominantly white-settler readership, those same opinions confronted and critiqued throughout the novel, are placed front and centre as the determining factor in justice and justification. The unnamed narrator becomes all of us, and our opinions on Indigenous activism, environmental justice, and retribution for past wrongs—those same derided by Arthur earlier in the narrative—remain paramount. As such, the polluted waters of the Ojibway community become little more than the inciting element of settler futurity. The waters remain an abstract idea through which liberal forms of guilt and justice may be

interrogated, disavowed, and ultimately moved past in order for the settler subject to persist; tropes of the Indigenous, along with the waters of Treaty 3 territory are once again mobilized, subsumed, and sacrificed toward settler regeneration and futurity.

Kelly's narrative is not a straightforward one. While its self-conscious articulations of settler liberal desire work to resist, or at least, call attention to the limits of late liberal environmental engagements that perpetuate a dual process of sanctification and sacrifice of both Indigenous lands and peoples, his narrative structure risks reinforcement of many of the problematic tropes he seemingly aims to interrogate. But this is of course the risk of irony as a mode of critique. To be sure, I was resistant to engage with the full extent of Kelly's use of irony in several initial readings of the novel. I think the reluctance of extending an ironic reading all the way through Kelly's narrative, as some critics have been unable to do, speaks to the novel's very implication of its non-Indigenous readers. As I have tried to show, the late liberal subjectivity that the novel dramatizes is complex and often reinforced by supposedly well-meaning settler subjects. The power of Kelly's irony is that it shows just how pervasive this form of liberalism is, especially under the conditions of dominant forms of settler governance and its subjectification. Indeed, Kelly's ironic critique implicates this very dissertation; as I aim to investigate water as a site of settler colonial dispossession, drawing out a more critical perspective on how settler colonial governance functions in and through the waterways of Turtle Island, a dissertation written by a settler scholar will always be an act of settler futurity—an extension of myself through space and time, as I attempt to reveal the limitations of settler liberal politics. Where I attempt to mitigate this implication in my turn to Indigenous literary expression and political response, and finally through a

consideration of what the settler state and subject must give up for the realization of Indigenous water rights and water worlds, Kelly's project in *A Dream Like Mine* is solely confined to revealing the limits of late liberal settler subjectification in relation to Indigenous rights and environmental justice

While *A Dream Like Mine* certainly cannot be read in a vacuum, and must be understood in relation to the perspectives and resistance of the Anishinaabe of Grassy Narrows, I maintain that a careful reading of the novel's irony, as well as its use of water in various registers throughout, reveals the stakes and limits of a late settler liberalism that works to constrain the meaning of Indigenous environmental justice issues generally, and water rights specifically in the 20<sup>th</sup> and 21<sup>st</sup> century. Where fixity and management serve as the means of settler logics of possession that allow Indigenous communities to be sacrificed toward the progression of the settler state, a late liberal politics of recognition and incorporation, or sanctification, work to obfuscate settler sovereign power amidst a "a cacophony of moral claims that help to deflect progressive and transformative activism from dismantling the ongoing conditions of colonialism" (Byrd 2011, xvii). Through attention to its narrative representation and mobilization in the novel, water once again serves as a productive site that has the greatest potential to both reveal the limits of these conditions, and, although Kelly stops short of this formulation, to also disrupt the sovereign power that at once pollutes it and mobilizes it as the means toward settler futurity. If we follow the limited modes of engagement that Kelly's narrative prompts us to consider, and aim to move beyond these limits, however pervasive, then water can return us to the site of Indigenous struggle, to the stakes of its

pollution, and to the necessity for dismantling the liberal and late liberal governance structures that order the Indigenous landscape and manage Indigenous resistance.

### **Environmentalism of the Poor: Resisting Late Liberal Governance in the English-Wabigoon River Systems**

If we are to read the waters represented in *A Dream Like Mine* through an ironic critique that aims to illustrate how water becomes incorporated as a limited and abstracted symbol of settler futurity, then how are we to read and engage the actual waters of Grassy Narrows and Wabaseemoong? Put another way, if Kelly's fictive representation can be understood as dramatizing the subjectification of a prevailing mode of settler colonial governance and its operation to manage and constrain Indigenous resistance and claims for justice in the wake of capitalist environmental violence, then how can the waters so impacted by this mode of governance be reclaimed for the Anishinaabeg of Treaty 3? While the aim of this dissertation is, amidst an understanding of settler colonial hydrosocial relations, water rights, and liberal governance, to examine the moments where Indigenous legal orders persist and re-emerge, bringing order back to the waters remade in the image of settler colonialism, the mercury pollution of the English-Wabigoon River systems, and ongoing state engagement with the Anishinaabe of Treaty 3 emphasize the conditions under which Indigenous water law remains subjugated.

Indeed, the late liberal ideology expressed through Kelly's narrator was alive and well when, in 2014, the Supreme Court handed down a seven to one decision, siding with

the province of Ontario in their position that they had the jurisdictional right to issue forestry licenses in Grassy Narrows' traditional territories (Grassy Narrows First Nation v Ontario). Grassy Narrows' had asserted that under Anishinaabe law, the agreements of Treaty of 3 were made solely with the Crown, and therefore they should be negotiating logging rights with the Federal Government and not the Province (Seymour 2016, 16-17).

Janine Seymour explains the decision:

The Supreme Court strictly considered the division of powers and held that while the federal government has exclusive jurisdiction over Indians and lands reserved for Indians under s. 91(24) of the Constitution Act, 1867, the doctrine of interjurisdictional immunity did not preclude provinces from justifiably infringing on treaty rights protected under s. 35(1) of the Constitution Act, 1982. (17)

The Supreme Court decision returns us once again to the realm of jurisdiction, illustrating how late liberal governance perpetuates the sovereign power of the Canadian state as an instrument of management, and never of the material change that would allow Anishinaabe legal orders to proliferate in response to the situation facing their communities. Deborah Cowen and Shiri Pasternak remind us that “Historically and in the present, it is through the claim to jurisdiction—and the materialization of these claims through infrastructure—that Canada attempts to “replace” established Indigenous legal systems with their own” (2018, n.p.). Late liberalism is the mode of governance which ensures jurisdictional claims to infrastructure on Anishinaabe lands always supersede Indigenous claims to justice and self-determination. Late liberal governance thus operates in the Grassy Narrows and Wabaseemoong communities of Treaty 3 through its supposed concern over the health and well-being of the Anishinaabeg peoples in the exact instance that the same settler state maintains and perpetuates the very conditions at the root of the deterioration of the Anishinaabeg's health and well-being. That such a decision to

increase Ontario's right to log the territories of Grassy Narrows can occur in the same moment that reports suggest logging may in fact be the source of the ongoing mercury contamination is telling. That Ontario asserts its jurisdictional authority over the traditional territories of Grassy Narrows as it promises to clean up the watershed and build care facilities for those suffering from Minamata Disease, is indicative of a mode of governance that manages Indigenous peoples, rights assertions, and resistance by ensuring that justice "is continuously deferred to a future self-healing from capitalism's present and ongoing violence" to draw once again from Dian Million (12). This is a mode of governance that ensures that Grassy Narrows and Wabaseemoong seek rights recognition from the very entity that continues to dispossess them of their lands, resources, and health as a people.

The environmental degradation and rights issues challenging these communities no doubt represent a dire situation for the realization of Anishinaabe water rights, and of the legal orders that ought to give meaning to them, expressing the conditions, cultural protocols, and worldviews that ensure water is treated with respect and reverence, and protected as an integral resource for the well-being of Anishinaabeg peoples. My focus on the dramatization of late liberalism in Kelly's narrative is not to suggest, however, that all environmental engagements are constrained by these relationships. My use of *A Dream Like Mine* and its ironic representation of late liberal politics in this chapter is certainly not to circumscribe the ongoing struggles for environmental justice at Grassy Narrows and Wabaseemoong, on behalf of Treaty 3 Anishinaabe and their allies, within the limited environmentalism portrayed in the novel. Rather, Kelly's narrative serves as an example of the nuanced and insidious nature of late liberal political response to

Indigenous environmental justice issues, offering important insight on the subjective operation of liberal governance structures and their harms in responding to the very environmental situations that they continue to perpetuate. The subjective dimensions of late liberalism offered through Kelly's ironic narrative are integral for understanding the complicities of the well-meaning settler subject, the internalization of settler logics of possession, and the limits of forms of justice that are premised always on settler futurity and the maintenance of the settler colonial status quo. The late liberalism and its subjectification expressed in *A Dream Like Mine* is what the Anishinaabe of Grassy Narrows and Wabaseemoong are often up against. This is the response of liberal governance and settler subjects as they manage the legibility of Indigenous rights and the Indigenous environmental justice movements that work toward a more robust assertion of those rights. But to suggest that this is where the environmental struggles of Grassy Narrows and Wabaseemoong remain would be to relegate them to the "deep waters" in which Arthur drowned. As activists, water protectors, and land defenders of the Anishinaabe communities have made clear, this has never been the fate of their struggle.

Where Kelly's dramatization of late liberalism does not extend beyond the realm of the settler subject, I remain committed to turning to the Indigenous communities themselves in order to further examine how they have responded to and reckoned with these powerful modes of governance and subjectification in struggles over the health of their waters. Nixon's conception of the "environmentalism of the poor," that is, what environmentalism might look like for "those people lacking resources who are the principal casualties of slow violence" (4), is useful for understanding the possible tacks of resistance for those many communities sacrificed toward the ends of settler colonial

possessive logics, their modes of capitalist extraction, and the resourcification of Indigenous waterways. Nixon asserts that we “need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence” (2). While Kelly’s novel helps to represent the political and strategic challenges of late liberalism and its perpetuations of violence in Indigenous communities, he is not so presumptuous as to offer a representation of what an Indigenous futurity might look like—of how the fictionalized community might go about resisting the late liberal political orders that are problematized in the novel. The self-imposed limits of Kelly’s ironic narrative, his difficult representative choices, and the circumscribed readings of the novel that these choices have elicited, echo again those of Conrad’s *Heart of Darkness*. In the conclusion of his article on the vastly divergent readings of *Heart of Darkness*, Patrick Brantlinger writes,

As social criticism, its anti-imperialism is undercut both by its racism and by its impressionism. But I know few novels, which so insistently invoke an idealism which they don’t seem to contain, and in which the modernist “will to style” is subjected to such powerful self-scrutiny—in which it is suggested that the “voice” at the heart of the novel, the voice of literature, the voice of civilization itself may in its purest, freest form yield only “the horror, the horror. (1985, 383)

Kelly’s narrative similarly is so committed to its ironic dramatization that itself risks becoming implicated in and subjected to the same scrutiny as its narrator; Kelly offers us nothing of settler subjectivity that is able to escape its late liberal manifestations, and certainly nothing of Indigenous resistance that moves beyond a crutch for settler futurity. This is indeed not his project. Nixon’s environmentalism of the poor, on the other hand, highlights the kind of movements that are central to resisting the imposition of settler colonial water worlds and their extractive, possessive logics. Nixon writes, “It is against such conjoined ecological and human disposability that we have witnessed a resurgent

environmentalism of the poor” (4); he continues, “So a central issue that emerges is strategic: if the neoliberal era has intensified assaults on resources, it has also intensified resistance, whether through isolated site-specific struggles or through activism that has reached across national boundaries in an effort to build translocal alliances” (4). The communities of Grassy Narrows and Wabaseemoong themselves have indeed been at the forefront of articulating and enacting an activism that moves beyond the late liberal governance that attempts to respond to and manage Indigenous environmental movements.

Where Nixon highlights the environmentalism of the poor as the necessary response to neoliberalisms’ intensified assaults, Indigenous environmental justice movements have existed long before our current crisis of globalized capitalism. Indigenous environmentalism has been adaptive and collaborative as it responds both to the ongoing assault on the inherent rights of Indigenous peoples—those established through a settler liberal order and its possessive logics—and the intensified logics of neoliberal capitalism and its late liberal governance structures of management and limited forms of cultural recognition. As Anishinaabe scholar and activist Debra McGregor explains, “First Nations activists who have formed alliances to advocate and “speak for the water” are at the same time resisting the genocide of their people” (37). McGregor articulates a distinctly Indigenous approach to environmental justice that has been practiced in Indigenous communities since ‘time immemorial’; she writes, “Environmental justice literature . . . assumes a certain ideology about ‘environment’—one with a focus on how certain groups of people (especially those bearing labels such as ‘minority,’ ‘poor,’ ‘disadvantaged,’ or ‘Native’) are impacted by environmental

destruction, as if the environment were somehow separate from us” (27); she continues, “An Anishinaabe understanding of environmental justice considers relationships not only among people but also among *all our relations* (including all living things and our ancestors)” (28). McGregor reminds us of the Anishinaabe legal orders that refuse the separation of water from the wellbeing of Indigenous culture, writing, “Among Native peoples, water is recognized as the lifeblood of the earth (a living and conscious being)”; “Water quality, then,” she continues, “is not just an environmental concern; it is a matter of cultural survival” (37). This is to say that the environmentalism of Indigenous peoples, Anishinaabe environmental worldviews, and their corresponding conceptions of justice have persisted in spite of an intensified neoliberal capitalism, and late liberal governance that attempts to manage the meaning of these movements.

Grassy Narrows’ fourteen year-long road blockade to protect their community from further clear-cutting is one example of how the Anishinaabe community has asserted Anishinaabe law in the midst of ongoing late liberal governance that would see the already mercury-ravaged community further subjugated to the effects of mass-scale clear cutting of their traditional territories. As Grassy Narrows activist Judy Da Silva notes, “The Anishinaabek have been closely tied to the land and water since time immemorial. It’s the lifeblood of our culture and way of life” (2016, n.p.). While Grassy Narrows had begun publicly opposing industrial logging in their territories in the late 1990s through conventional channels of Federal and Provincial complaint procedures, letter writing, and assertions of their Treaty rights (Willow 2012), Da Silva explains how, “by 2002, our people were frustrated with the “dead end” complaint processes over the destruction of our forest by the Ministry of Natural Resources (MNR) and Abitibi. We

had no protectors except ourselves” (2016, n.p.). In 2006, Anishinaabe anti-clearcutting activists from Grassy Narrows First Nation joined forces with Rainforest Action Network's (RAN) direct-action environmentalists to block the Trans-Canada highway just north of Kenora, Ontario, ensuring ongoing public attention to Grassy Narrows' cause (Willow 2012, 371). From environmental alliances, to information campaigns, and marches, Grassy Narrows has ensured that the north-western Anishinaabe community remains in the purview of settler allies and governments further south, not as a site of mythic attachment or romanticized indigeneity, but as a community resolute in its struggle to achieve justice.

Anna J. Willow reminds us that “observers of the international environmental movement have found that indigenous-environmentalist partnerships have often been predicated upon reproductions of an asymmetrical political status quo, thereby perpetuating indigenous peoples' systemic disadvantages and predestining promising partnerships for eventual disintegration” (372). Grassy Narrows, however, has consistently garnered support through strategic alliances with environmentalists that respect the rights struggle of the Anishinaabe, while “imagin[ing] themselves as members of a diverse community united by an emplaced interest in boreal forest protection” (372).<sup>62</sup> Furthermore, the environmental justice movements of Grassy Narrows have mobilized in direct opposition to the settler colonial infrastructures that materialize Canadian state claims to jurisdiction over Anishinaabe lands and legal orders (Cowen and

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<sup>62</sup> From the aforementioned environmental alliances around Grassy Narrows logging blockades, to the long-running website, [freegrassy.net](http://freegrassy.net), and support from the David Suzuki Foundation, Grassy Narrows has built strategic environmental alliances around the issues effecting their community. For more information see [freegrassy.net](http://freegrassy.net) and Victoria Gibson's 2018 article on the ongoing call to actions from and on behalf of Grassy Narrows: <https://www.thestar.com/news/canada/2018/04/19/david-suzuki-indigenous-leaders-demand-justice-for-grassy-narrows.html>.

Pasternak 2018). This is an environmentalism led by Indigenous peoples and that foregrounds Indigenous environmental perspectives, inherent rights, and the Anishinaabe legal orders that have consistently been “a source of justice that has served Indigenous peoples for thousands of years and can continue to do so” (McGregor 2009, 29). This is an Indigenous environmentalism that defers not to state-mandated recognition-based politics in order to achieve justice in their communities. While, as the recent Supreme Court case highlighted above illustrates, Grassy Narrows continues the hard work of attempting to hold the state accountable to the progressive inclusionary politics it purports to support under late liberalism, it ensures that such engagements do not come at the cost of negating the material conditions that allow the destruction of their communities to persist. Grassy Narrows has resisted narratives that would situate it as disempowered and damaged, and if recognition is sought through these campaigns, it is the recognition not of a limited form of indigeneity and environmental justice, but of settlers’ and the settler state’s complicity in both the environmental degradation effecting their community and the late liberal governance structures that work to delimit the meaning of environmental justice for the Anishinaabe of Treaty 3.

While this chapter has largely served to examine the operation of late liberal politics and their relation to Indigenous water rights issues through an aesthetic representation of settler subjectification and enactment of these politics, I gesture here to the Indigenous modes of environmentalism that resist such governance structures and their subjectification in the waterways of the Anishinaabe. Although Kelly’s narrative is a useful illustration of the insidious fluidity of late liberal politics and their relation to Indigenous environmental justice movements, his project stops short of exploring the

material requirements for Indigenous rights assertions in the midst of the slow violence effecting their communities. The novel's ultimate representation of the subjective processes underpinning the sense of settler futurity offers little more than an elucidation of the kinds of liberal governance that these communities are up against. Grassy Narrows' ongoing environmental justice movement, on the other hand, is representative of what Anishinaabe activist Winona LaDuke has referred to as "natural law," that which incorporates Anishinaabe legal orders toward the remaking of Indigenous water worlds.

It is not coincidental that in my turn from Kelly's novel, from its representation of settler liberal subjectivity and its perpetuation of environmental destruction on Indigenous land, to a consideration of the ongoing resistance of the communities of Grassy Narrows and Wabaseemoong, that I also turn to Indigenous women—the activists and theorists who are engaged with the ongoing resistance of the Anishinaabe communities in this region and beyond (Da Silvia; LaDuke; McGregor). The absence of any female voice in Kelly's narrative is further indicative of its self-imposed limits with regards to articulating the requirements for Indigenous resistance to the late liberal subjectivity that he dramatizes. As Cheryl Suzack et al. explain in their 2010 edited collection *Indigenous Women and Feminism: Politics, Activism, and Culture*, social justice for Indigenous peoples "can be attained only through specific attention to gender and must be considered as an integral part of, rather than a subsidiary to, struggles for liberation" (3). For Huhnorf and Suzack, Indigenous feminism must be understood "as a rubric under which political and social organizing can and should take place" (2). While this has not been a chapter about Indigenous feminism—indeed, given its focus on the masculine settler liberal subject, it is implicitly a chapter about the absence of

engagement with Indigenous feminism—I conclude by turning to this “rubric under which political and social organizing can and should take place” in order to illustrate the extreme gulf between settler liberal engagements with Indigenous rights and the working of Indigenous communities, thinkers and activists themselves. As discussed in the introduction, these Indigenous women are the water protectors. A settler governance and subjectivity that fails to engage with their central role in protecting the waters in their communities will also be deficient in engaging Indigenous water rights on their own terms.

Where the first two chapters of this dissertation have predominantly focused on examining the settler ordering practices and governance structures that have degraded Indigenous waterways, negated Indigenous world views, and which have sought to delimit the meaning of Indigenous rights and environmental justice, my next chapter turns to Indigenous aesthetic representation of an Indigenous community’s response to the James Bay hydroelectric dam, as I more thoroughly examine articulations and assertions of Indigenous legal orders, and water laws specifically. Chapters one and two have shown the kind of liberal ordering and late liberal governance that both create the conditions for the mass scale remaking of Indigenous water worlds under the possessive and extractive logics of settler colonialism, and the settler state’s attempts to manage and delimit the meaning of Indigenous rights in responding to these jurisdictional and material impositions on their territories. The response of the James Bay Cree in northern Quebec, and the fictionalized Indigenous community in Linda Hogan’s *Solar Storms* further illustrate the complexities of responding to the aggressive materializations of settler colonial hydrosocial relations. Through examination of fictional representation and

community political response, along with theories of Indigenous law and what has come to be known as Indigenous 'place-thought,' I attempt to grapple with the complexities, contradictions, and self-determination of lived lives while examining what Indigenous water law can mean as a response to settler colonialism both inside and outside of state engagement.

### **Chapter 3: (Re)making Indigenous Water Worlds: Kinship, Place-Thought, and Relational Modes of Resistance in the James Bay Region**

“Maîtres Chez Nous” reads a campaign poster of the Jean Lesage Liberal party in early 1960s Quebec. The slogan—“Masters of Our Own House” in English—became the rallying cry of Quebec’s move to nationalize its hydroelectric power, while also serving as a powerful expression of Quebecois nationalism through the Quiet Revolution. In the same moment that mercury was flowing into the English-Wabigoon River systems in Treaty 3 Anishinaabe territory, with the Province of Ontario and the pulp and paper industries disregarding both the health of Indigenous peoples and the waters that they rely on, the Province of Quebec sought to harness the power of the massive waterways of James Bay toward Quebec sovereignty. Hydro-Quebec would become Canada’s biggest utility, mobilizing the Betsiamites, Manicougan and Outardes Rivers in eastern Quebec, and the Eastmain, Opinaca, and Caniapiscau Rivers, to reservoirs on La Grande Rivière in the north-west of the province near James Bay, through massive hydroelectric damming projects (Evans-Brown 2017; Kirkey 2015). These are the territories of the Innu to the east, and the Eastern Cree and Inuit along the banks and inland of James Bay to the north and north-west. While the mass-scale development of the waterways of Quebec has occurred through several phases beginning in the 1960s and is ongoing today, radically reshaping the homelands of the Innu, Cree, and Inuit,<sup>63</sup> the most notable

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<sup>63</sup> While I reference the Cree, Inuit, and Innu in discussing the history of the project, my argument and analysis in this chapter is largely focused on the Cree, and to a less extent, the Inuit, and their role in the signing of the James Bay and Northern Quebec Agreement. For more information on the Pessamit Innu and their relation to hydroelectric development in Quebec, see Sam Evans-Brown’s special four-part series *Powerline*, as part of the podcast *Outside/In*: <http://outsideinradio.org/powerline/>.

developments of this era fall under the banner of the James Bay Project, which began in 1971 (McCutcheon 1991).

The James Bay Project ultimately resulted in the 1975 James Bay and Northern Quebec Agreement, which is often cited as Canada's first Comprehensive Land Claim Agreement, and which represents the first major agreement between the Crown and Indigenous peoples since the Numbered Treaties (Grand Council of the Crees 1995; McCutcheon 1991). The results of this agreement have been both celebrated and derided by Indigenous peoples, revealing the tensions in negotiating Indigenous rights within the settler state, as well as the political challenges facing the re-making of Indigenous water worlds amidst the backdrop of aggressive development projects. My discussion of the Indigenous peoples in the James Bay region and their relation to the James Bay Project draws on a breadth of existing research, community, and legal perspectives and cultural production in order to provide the historical and political context for the James Bay Crees' experiences with mega-resource development in their territory (Coon Come 2004; Evans-Brown 2017; Grand Council of the Crees 1995; Hornig 1999; Kirkey 2015; McCutcheon 1991).

I begin by focusing on the James Bay Cree in particular, and their response to the James Bay Project, their negotiation of the James Bay and Northern Quebec Agreement, and the formation of the Grand Council of the Crees—a Cree political body which now represents over 18,000 Cree people in the eastern James Bay and southern Hudson Bay regions of Northern Quebec. The James Bay and Northern Quebec Agreement (JBNQA) and the actions of the Grand Council of the Crees serve as an entry point for understanding the potential and limits for Indigenous rights negotiations at the state level

to create the conditions for the remaking of Indigenous water worlds. I investigate the political work of the Grand Council of the Crees in part through their representation in the 2010 documentary, *Together We Stand Firm*, produced by the Grand Council of the Crees in collaboration with the Cree Naskapi Commission and directed by Franziska von Rosen. Serving as an important document of nation building for the Cree, I examine the documentary's mobilization of the epic form in enacting a narrative of Cree nationalism and national culture.

Where the signing of the James Bay and Northern Quebec Agreement has generated much discussion and debate over the requirements for and legibility of Indigenous rights negotiations with the Canadian state (Coon Come 2004; Gagné 1994; Hornig 1999), I then turn from the Grand Council of the Crees to how the development in the James Bay Region and the signing of the JBNQA inspired response through the form of a deeply political and philosophical novel in Linda Hogan's *Solar Storms*. Hogan's novel affords the opportunity to think about the powers of literature, figurative representation, and story, alongside those of law and policy. Where *Together We Stand Firm* emphasizes the necessity of Cree nation building, and particularly through a masculinist epic form, *Solar Storms* represents the significance of Indigenous hydrosocial relations in responding to mass scale development, emphasizing the integral role of Indigenous women, kinship relations, and the paradoxical nature of water as that which must be protected and honoured. Taken together, the work of Grand Council of the Crees and their signing of the JBNQA, and Hogan's *Solar Storms*, provide insight into the complexity of Indigenous water rights and their relation to the jurisdictional powers and infrastructural impositions of the settler state.

Chapters one and two sought to examine how the logics of a settler liberal order organize Indigenous lands and waters, and how the enactment and subjectification of late liberal governance manages and appropriates Indigenous resistance while perpetuating the destructive futurity of settler colonialism in Indigenous waterways; these first two chapter tracked how these liberal modes worked to dismantle Indigenous water worlds and foster the conditions for the illegibility of Indigenous rights. This chapter focuses more explicitly on the diverse and multifaceted Indigenous responses to these settler colonial impositions on Indigenous water worlds; it considers the complex ways that Indigenous nations and Indigenous cultural production engage with and figure the politics of land and water rights, engagements with the settler state, and Indigenous hydrosocial relations toward the remaking of Indigenous water worlds. In focusing on the specific region of James Bay, and on two examples that attempt to respond to hydroelectric development in Indigenous territories—one the political actions of the James Bay Cree, and the other an imaginative reframing via Indigenous literature—this chapter examines how the remaking of Indigenous water worlds occurs through complex relationships between Indigenous nations and between Indigenous nations and the settler nation state.

While the struggles of the Anishinaabe in the Trent-Severn Waterway, and of the Anishinaabe of Treaty 3 in north-western Ontario are representative of important assertions of Indigenous rights amidst the power of 19<sup>th</sup> century settler liberal ordering practices, and 20<sup>th</sup> century late liberal environmentalism and recognition-based politics, the signing of the James Bay and Northern Quebec Agreement, in conjunction with the 1973 Calder decision and the 1973 Paulette decision in the North West Territories, ushered in a new landscape for the assertion of Indigenous rights within the Canadian

state. While the signing of the JBNQA itself occurs prior to Kelly's dramatization of late liberalism, the effects of the JBNQA extend well beyond the 1975 agreement, serving as a pivotal reference point and precedent for both modern state engagements with Indigenous rights issues, and Indigenous peoples' responses to the limiting legibility of these engagements into our contemporary moment. As I will show, this is not to suggest that the signing of this agreement transcends various forms of settler liberalism, and liberalism's power to limit the legibility of Indigenous rights; the signing of the James Bay and Northern Quebec agreement is deeply implicated in the jurisdictional powers of the state and appeals to state forms of recognition, which often limit the realization of Indigenous sovereignty and self-determination (Alfred 2008; Dorries 2012; Kulchyski 2013). In fact, this is the very moment wherein the process was initiated to negotiate land claims by transferring "Aboriginal right and title" to the Crown for defined rights and benefits agreed to by the signatories. For many, the signing of the James Bay and Northern Quebec Agreement and its relation to the introduction of modern treaties and the Comprehensive Land Claim Agreement process, marked the beginning of the modern process of Indigenous rights extinguishment (See Alfred and Corntassel 2005; Coon Come 2004; Diabo 2012).

Further, where late liberal recognition-based politics are present in various manifestations throughout the history of the James Bay Project, the events that transpired in this region also mark an important specificity in processes of settler colonialism as they relate to the situation and history of Quebec. As such, this chapter builds on my analysis of late liberal governance structures examined through Kelly's ironic dramatization in chapter two, and considers the specificity of the construction of a

postcolonial settler society in Quebec. As I will examine below using Lorenzo Veracini's concept of "narrative transfer" (2010), Québécois nationalism in the latter half of the 20<sup>th</sup> century, and the cultural production that bolstered it, works to construct a narrative of a postcolonial settler society vis a vis Quebec's relation to English Canada. Through the celebration of an intensified political autonomy, sparked in large part through the nationalization of their resources, and particularly through the formation of Hydro-Québec and the initiation of the James Bay Project (Evans-Brown 2017), Quebec effectively *transfers* the discourse of colonization away from Indigenous peoples in the province and constructs themselves as a kind of postcolonial settler society, free from the constraints and political subjugation of English Canada. This narrative transfer allows for a cultural reframing of colonialism, while perpetuating the ongoing colonization and incorporation of Indigenous territories. The rights claims and colonial situation of the Cree, Inuit, and Innu in Quebec correspondingly become obscured by Quebec's powerful narrative of national emergence. These modes of settler colonialism compound to further the possessive logics of the settler state, while further rendering the inherent rights of Indigenous peoples illegible through complex processes of recognition-based politics and transferist narratives; however, the James Bay Crees' ability to dramatically refigure the terms of negotiation for the mass-scale dam development in their territories, as well as to mobilize strategic alliances in order to halt subsequent phases of dam development, marked a new era also for the political power of Indigenous communities in Canada (Alcantara 2017; Craik 2004; McRae 2004). This chapter ultimately aims to examine the meaning of this new era of rights and politics in specific relation to Indigenous

conceptions of the hydrosocial, and how Indigenous water worlds may be remade or further subjugated in its wake.

To be sure, the conditions under which the James Bay and Northern Quebec Agreement was negotiated exist on a continuum of settler colonial hydrosocial relations, that, while emerging in unique relation to Québécois nationalism—as I will explore below—have their roots in the settler logics of possession that have largely structured engagements with water on Turtle Island since the 19<sup>th</sup> century.<sup>64</sup> In chapters one and two I traced the settler liberal ordering of Indigenous lands and waters, and the late liberal governance that circumscribes Indigenous resistance through life-writing, literature, and public policy in order to examine a narrative of settler colonial approaches to water that I contend limit the legibility of Indigenous rights in the Canadian nation state, as they constrain engagement with water through three settler colonial registers: water as propertization, water as utility, and water as the means of securing and ensuring settler futurity. These registers are the product of Western approaches to water that cannot disentangle water’s complexity from land-based conceptions of fixity and private property, which attempt to constrain and control water toward the ends of settler infrastructure, or which mobilize water as metaphor for the fluidity and flexibility of liberal modes of governance, recognition, and cooptation that works to undercut Indigenous rights and resistance. These registers of water work relationally in further

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<sup>64</sup> While French-Canada’s historic relationship to the Catholic Church certainly complicates the dominance of a liberal order, McKay’s liberal order framework discusses how Quebec became incorporated into the liberal order, writing, “The hegemonic incorporation of Quebec was indispensable to the achievement of liberal order and could only be achieved through carefully articulated politics of elite accommodation and cultural compromise, which have gone on to become misleadingly mythologized as defining features of Canada itself” (636). Further, with the rise of Québécois nationalism, and the secularization of Québécois society through the Quiet Revolution, it could be argued that Quebec became even further enmeshed in the liberal order outlined by McKay in the latter half of the 20<sup>th</sup> century.

abstracting the environment from the human and non-human relations that it sustains. While Moodie's settler colonial rhetoric of conquest and settlement, the property-centered protections of the Navigable Waters Protection Act, and the late liberal environmentalism ironically dramatized through Kelly's *A Dream Like Mine* are not the only expressions of Western approaches to water, I argue that they are representative of the dominant approaches that largely shape and set the terms of engagement for Indigenous rights, self-determination and sovereignty, and expressions of Indigenous law between Indigenous peoples and the settler state.

While Indigenous resistance to the imposition of settler colonial ordering and management of water has been addressed in previous chapters, in this chapter I focus more explicitly on the complex terrain involved in the remaking of Indigenous water worlds as I turn from Western constructions of water and their relation to the social and material worlds in settler Canada, to exploration of specific Indigenous conceptions of water and Indigenous world views that have been expressed through politics, law, and literature as they relate to hydroelectric development in the James Bay region. I explore the remaking of Indigenous water worlds through two specific examples—one a legal/political response to state encroachment on Indigenous lands and waters through the James Bay Crees' response to the James Bay Project, and the other a figurative representation of Indigenous struggle in the waters that flow downstream from James Bay, through Linda Hogan's fictionalized account of Indigenous resistance in her novel *Solar Storms*. I begin within an overview of the James Bay Project in order to express both the mass-scale implications of a single settler colonial hydro-development project, as well as the political response of the James Cree through the formation of the political body of the

Grand Council of the Crees. Far from a straight forward engagement with late liberal recognition-based politics, the signing of the James Bay and Northern Quebec Agreement, in conjunction with the Crees' strategic alliance building and new found political powers, represent an important assertion of Indigenous rights that centres on the significance of water for Indigenous peoples.

While I read the James Bay and Northern Quebec Agreement as a generative moment for Indigenous rights assertions at the state level (see Craik 2004; The Grand Council of Crees 2010), I also aim to attend to those hydrosocial relations that cannot be captured or made legible through state engagement, especially when Indigenous waterways have already been dramatically transformed and organized around settler colonial registers of water. The latter half of this chapter, then, focuses explicitly on the Indigenous hydrosocial relations not adequately expressed through Indigenous rights negotiations with the settler state. Mobilizing Indigenous theories of place-thought, kinship, and Indigenous feminist theory, along with Indigenous cultural, theoretical, and political conceptions of water, I read Linda Hogan's figurative representation of resistance to the James Bay Project in her novel *Solar Storms* in order to engage with Indigenous ontologies/epistemologies, resistance, and hydrosocial relations that resist the fixed legibility of Indigenous rights. Hogan's alternative, imagined account serves as a commentary on the James Bay agreement; her novel offers a fictional supplement to the historical events and particular political route that was taken by the Grand Council of the Crees, reminding us what is compromised in such agreements and why the agreement should not be thought of as the culmination of Indigenous struggle in the region, or of the political goal of Indigenous water rights achieved once and for all. Further, by

emphasizing the fluidity of water as an element that organizes space, time, and relationships—rather than the fluidity or flexibility of settler liberalism, as I discussed in relation to Kelly’s novel—Hogan ultimately offers a representation of what Indigenous political response, community-building, and legal orders could look like in responding to mass-scale development in their territories. While these engagements unfold in distinct and complicated ways, they both offer insight into the potential and the implications for Indigenous nations to re-make water worlds amidst the possessive logics and jurisdictional power of settler colonialism.

This chapter thus examines how Indigenous relations to water come to resist and actively construct alternatives to settler colonial water worlds. If settler water worlds are organized around the dominant registers of propertization, water as a utility, and the positioning of water as the means toward settler-futurity, then, as I will examine through Indigenous theorists and Hogan’s novel below, Indigenous water worlds are often made through the foregrounding of place-based relationality, through recognition of water’s integral role in cultural resurgence and political resistance, and as a transmitter of Indigenous social, legal, and political orders. Further, and importantly, although articulations and representations of Indigenous water worlds often exist in opposition to or as distinct from the constraints of settler colonial registers of water, and serve as a means of Indigenous cultural and political resurgence in the settler state, they must also be understood to exist in complex relation to settler colonial water worlds and state engagement. This complicated relationality challenges the fixity of any singular approach to water and emphasizes the dialogical relation between Indigenous nations and Canada that is necessitated by water. To put this another way, I examine the imposition of the

James Bay Project, by putting the Crees' singing of the James Bay and Northern Quebec Agreement in dialogue with Hogan's reminder of the agreement's limits via her figurative representation, not to set one mode of engagement as somehow more effective than the other; rather, reading the powers of literature, figurative representation, and story, alongside those of law and policy, illustrate the complex and multifaceted modes of Indigenous engagement necessitated by state encroachments into Indigenous waters. As the political work of the Cree shows, the state is not an entity that can simply be moved passed or bracketed in the remaking of Indigenous water worlds, nor, as Hogan illustrates, should the state represent *the* site of their (re)making. As I will show through my sites of analysis below, water both demands this state engagement, and also offers the means through which Indigenous nations might imagine the remaking of water worlds otherwise. This chapter, then, investigates the different modes through which Indigenous water worlds are expressed, and how they may be made and remade through Indigenous law and philosophy, literature, and also through a complicated relationality with the settler state.

Alan Lawson has noted that settler colonial contexts such as Canada may be one location "where the processes of colonial power as negotiation, as transactions of power, are most visible" (qtd. in Sugars 2002, 70). The examples discussed in this chapter present the potential and the limits of different modes of engagement that always already exist in negotiation and transaction with the powers of the settler state. Water is the means through which the demand for these interactions are facilitated and made apparent, working as what Lawson describes as the "sign of the historical relationality from which neither the settler nor the indigene can be separated." (qtd. in Sugars, 85); however,

where water serves as a sign of and impetus for this historical relationality to the settler state, it also provides the means of connection for the Indigenous knowledge systems and kinship ties that are foundational to Indigenous worldviews, legal orders, and rights assertions inside and outside of that state engagement. In what follows, I examines the complex and shifting political relationships and tensions between settler and Indigenous water worlds and the various modes through which this relationality is navigated by Indigenous nations, communities, and writers toward the social and political justice of Indigenous peoples.

### **The James Bay Project, the Grand Council of the Crees, and Indigenous Nationhood Under the Imposition of Settler Water Worlds**

Forming the southern tip of Hudson Bay, the shores of James Bay run through Quebec and Ontario, with its numerous islands to the north now part of the territory of Nunavut. To the east lie expanses of boreal forests, with lowland tundra and muskeg bog characterizing the ecosystem of its western shores. In his entry for the *Environmental Encyclopedia*, Bill Asenjo describes the James Bay region as “similar to Siberia covered in tundra and sparse forests of black spruce and other evergreens. It is home to roughly 100 species of birds, twenty species of fish and dozens of mammals, including muskrat, lynx, black bear, red fox, and the world's largest herd of caribou” (Asenjo 2003). While the Cree and Inuit have resided in the James Bay region for centuries, thriving in its often harsh landscapes, the bay was “discovered” in 1610 by Henry Hudson and named after

Thomas James, who entered the Bay in 1631 and survived a “particularly difficult winter on Charlton Island” (*Canadian Encyclopedia*, “James Bay”).

With hundreds of rivers running into James Bay, it served as a major route for trade, as the Cree brought furs down its vast river systems, which drained to surrounding areas, including to active Hudson’s Bay Company posts at Fort Albany, Moose Factory, and Fort Rupert. As discussed through the work of Desiree Helligers, and explored below in Linda Hogan’s *Solar Storms*, the James Bay Hydroelectric Project should be considered on a colonial continuum which replicates, revisits, and perpetuates the long-term and intergenerational effects of overtrapping during the fur trade in this region (Helligers 2015). This continuum of the exploitation of the fur trade which led to a depletion of animals, starvation, and the severing of Indigenous cultural knowledge, along with the devastating results of the dam’s construction illustrates how from the time of early settlement to the harnessing of the Bay’s capacity for hydro-electric power in the latter half of the 20<sup>th</sup> century, James Bay has been an important site of settler-colonial nation building—a marker of settler futurity through extractive capitalist enterprises that often resulted in Indigenous death (Helligers 2015); however, the fur trade, in early iterations, also represented important intercultural exchange and Indigenous self-determination in the region.<sup>65</sup> Where the results of the James Bay Project have led to important assertions of Indigenous nationhood (see the Grand Council of the Crees 1995, 2010), the territory should also be understood as an integral site of Indigenous resistance

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<sup>65</sup> See the ethnographic-history of Hans M. Carlson’s 2008 *Home is the Hunter: The James Bay Cree and their Land* for how the Cree successfully navigated early encroachments into their territories by fur traders and missionaries.

and resurgence. As former Chief of the Grand Council of Crees and the Assembly of First Nations, Matthew Coon Come, notes,

In a way, we developed along with the Europeans in a symbiotic if not always mutually beneficial relationship, which continued until the middle of the last century. When the Europeans first contacted our society it was primarily for trade purposes. For more than three hundred years of our relationship, the Crees continued to occupy the land as we had always done. This is how it was through centuries of colonial dealings with our lands. (2004, 154)

Coon Come's comments here gesture to the agency and autonomy of the James Bay Cree in relation to their historic role in the fur trade, and the necessity of mutual reliance that marked colonial interactions in the region. While the necessity of this co-constitutive relationship had broken down almost a century earlier with the decline of the fur trade, and the solidification of the settler nation state (Defalco and Dunn 1972; Gaudry 2016), the construction of the James Bay Project in the latter half of the 20<sup>th</sup> century stands as the material and unapologetic denial of this co-constitutive relationship.

With rapid cultural change and nationalization of private industry a result of the Quiet Revolution, in the 1970s Quebec Premier Robert Bourassa looked north to the James Bay region, seeing it as key to solidifying Quebec's economic progress and power on the national stage. "Simply stated," Bourassa said, "[the development of James Bay] is the key to Quebec's future" (Qtd. in *Together We Stand Firm*). The James Bay Project was officially launched in 1971 as a vaguely defined plan to harness roughly twenty rivers flowing into the eastern side of James and Hudson Bays (McCutcheon 1991, x; Coon Come 2004). Construction began with the building of roads north into the James Bay region in 1971, with the initial dam construction site focused on the harnessing of La Grande Rivière in 1972. Encroachment into the territory was undertaken without any consultation or even notification to the Cree, Inuit, or the Innu further east, whose

traditional homeland and hunting grounds cover vast swathes of the dam's construction sites, from the source of the bay to its many tributaries downstream. Injunctions were filed almost immediately by the Cree and Inuit in the spring of 1972. While construction was halted at various periods, it was not until 1975—and arguably much later—that the Cree and Inuit reached an agreement with the government of Quebec to have their rights and interests in the territory recognized and protected (Kirkey 2015; Hornig 1999).<sup>66</sup>

To be sure, the James Bay Project signaled a mass re-making of Indigenous water worlds in the image of settler colonialism. Where the Bay, and the lakes and rivers that it feeds served as travel and trading routes for the regions' Cree, Inuit, and Innu, as well as grazing and migration grounds for the significant wildlife that traversed the territory, these waterways would be radically re-shaped through the construction and operations of the James Bay Project and other hydroelectric dams. While it is not my aim to provide an ethnography of the Eastern James Bay Cree and their cultural and political practices around water—some glimpses of these practices are represented fictionally in Hogan's work, and a great deal has been written and presented by community members or researchers in close proximity to communities<sup>67</sup>—the scale on which these waterways and the people who rely on them were disrupted cannot be understated.

As Patrick D. Murphy notes, “Mega-dams do not merely hold back water and silt. They also displace and destroy cultures and communities who once lived in the valleys filled to create the reservoirs” (2011, 29). The James Bay Project called for the

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<sup>66</sup> The James Bay and Northern Quebec agreement was amended in 1978 to include the Naskapi Innu Nation, through the Northeastern Quebec Agreement. For more information, see the James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement, annual report, <http://publications.gc.ca/site/eng/373072/publication.html>.

<sup>67</sup> See for example, Niezen, 2009; Carlson, 2008; Grand Council of the Crees 2010.

development of an area totaling around 166,500 square kilometres, an area larger than New York State, including the entire La Grande Rivière basin, much of the Opinaca River basin, and large sections of the Caniapiscou and Koksoak basins (Kirky, 2015, 88). It also called for the construction of four massive dams along La Grande Rivière with eighteen spillways and 130 kilometres of dykes (Kirky, 88). The project was said to have flooded 11, 500 square kilometres of wilderness land. The flooding created mercury contamination in fish as mercury was released from rotting vegetation in the reservoirs, irrevocably damaging a major food source of the region's Indigenous peoples (*Canadian Encyclopedia*; McCutcheon 1991). In 1984 a herd of roughly 10,000 caribou, another integral food source, drowned while crossing the Caniapiscou River, which had been dramatically expanded and made to run at an accelerated rate, a result of the dams' water diversions (Carlson 2008).

The James Bay Project represents the epitome of the settler colonial register of water as utility. From Moodie's mills and celebration of water as a means for shipment and settlement, to Traill's idealized settler economy, and the Trent-Severn Waterway taking precedent over the rice harvesting of the Anishinaabe, to the pulp and paper industries' poisoning of the English-Wabigoon River systems in Treaty 3, the scale and significance of a hydroelectric project the size of James Bay signals the apex of a settler colonial hydrosocial relationality that constitutes water largely through its utility as a nation building and capital generating element. While hydraulic fracking and the water required for extracting oil from the tar sands and for the tailings ponds required to contain the byproducts of their oil production are increasingly representative of how water is registered as utility in the Canadian settler colonial landscape, hydroelectric dams have

been and remain key to Canada's settler colonial project.<sup>68</sup> Dams, like much of Canada's energy extraction, unsettle Indigenous territories in the north to increase or bolster the power and capital of settler colonialism in the south. As Rob Nixon writes in his discussion of megadams, "The megadam as an icon of national ascent becomes coupled to the descending prospects of communities that have become ecologically unmoored, cut off from a drowned commons that . . . had proffered a diverse diet, a livelihood and a sustained temporal identity of continuity within change"; he continues, "In the wake of the megadam such communities are in the most literal sense, inundated by development" (2011, 152). The power of a settler colonial hydrosocial relation premised on the harnessing of water as a utility—that which becomes a means of securing and extending sovereign power over Indigenous lands and waters—has dramatic effects on the landscapes and cultures who have lived in and made use of these regions for centuries.

The mass-scale and location of the James Bay Project represented the filling in of a "geographical blank space" in Northern Quebec for the majority of Quebecers who lived in the south (Desbiens 2013, 2). The construction of a strong Québécois national identity hinged on the assertion of territorial sovereignty in the far reaches of Quebec's Northern territories. For the Eastern James Bay Cree and the Inuit, the encroachment of the James Bay Project into their territories meant further assertions of settler colonial jurisdiction over Indigenous lands and waterways. As Desbiens notes,

Emerging out of the quiet revolution and coinciding with the decade that would culminate in Quebec's first referendum on sovereignty, hydroelectric development in James Bay underscored at least three questions that are at the heart of the nationalist movement but also extend to Canada as a whole: Who are

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<sup>68</sup> The ongoing construction of British Columbia's Site C Dam represents the latest iteration of dam building as a settler colonial project amidst Indigenous resistance. For more information see Christie, Hendriks, Raphals, and Bakker 2017: <http://policyoptions.irpp.org/magazines/april-2017/site-c-its-not-too-late-to-hit-pause/>

the Québécois people? What are the contours of their national territory? Is their claim to Aboriginal lands and resources legitimate? (2)

Pasternak argues that Jurisdiction is both a spatial and legal concept (2014, 152). The James Bay Project worked to respond to at least the latter of these two questions: its construction operated as a means to produce a settler colonial jurisdictional space throughout Indigenous territories in the James Bay region, expanding the contours of what was understood to be Quebec's national territory, while rendering Indigenous rights in the territory illegitimate, or at least inconsequential in relation to the imposition of the massive development undertaken in Cree, Inuit, and Innu territories. Even as the James Bay Cree and Inuit would come to maintain legal control of their territories through the James Bay Agreement, the waters harnessed by the dams ensured that this settler colonial jurisdictional space would flow downstream, unmitigated, altering the terrain and lifeways of the region's Indigenous peoples. The space of Indigenous territories was ultimately re-organized in the image of Québécois national unification;<sup>69</sup> this re-organization—the production of a new, distinctly Québécois northern landscape—was achieved culturally, through media and public outreach campaigns, such as the Liberal's "Maîtres Chez Nous" slogan, which brought the northern region and the industrial feats of the hydroelectric industry into the consciousness of the Québécois in the south; politically, through the Liberals' economic policies to bolster and exploit rising Québécois nationalism and independence; and legally, through the presumed territorial

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<sup>69</sup> See Pasternak for a contextualization of jurisdiction and territory between federal and provincial governments under settler colonialism. She writes, "The division of jurisdictional powers between federal and provincial orders of government in Canada is laid out in sections 91, 92, and 93 of the *Constitution Act, 1867*. Provincial jurisdiction, according to section 92, includes control over natural resources, and this control is further distributed across a range of oversight bodies such as park management authorities (e.g., Société des établissements de plein air du Québec), mining and forestry extraction (e.g., *Manitoba Provincial Parks Act*), and land management bureaucracies and zoning (e.g., Peel Land Use Planning Commission)." (2014, 151)

sovereignty of the government of Quebec (Desbiens 2013). The aggressive nature of this campaign meant that in a very short period of time, “James Bay emerged as a new cultural landscape” with the homelands of the Eastern James Bay Cree and Inuit “resignified according to different ways of knowing nature and a different ontology about the place of humans within it” (Desbiens 2013, 3).

In her text, *Power From North: Territory, Identity, and the Culture of Hydroelectricity in Quebec*, Desbiens traces the means by which cultural production worked in conjunction with the material production of the hydroelectric dams to enforce the idea that the northern landscape belonged to the Quebecois. Desbiens suggests that “dam building in the North also possessed a literary dimension in that it was *emplotted*, to use Hayden White’s expression” (3). This is to say that the dam’s construction served as an integral plot point within the Quebecois nation building narrative, “as heroic epic, showing that the exploitation of the symbolic power of dams is integral to the exploitation of the water resources they are connected to” (3). Further, as Desbiens and others have noted, “electricity is a prime icon of modernity” and “dam’s hydroelectric power provide perhaps the most versatile reservoir of symbolic meaning that can be accessed by political power” (3).

The James Bay Project and the cultural production that surrounded it worked to construct a distinctly settler colonial space in a region relatively untouched by settler colonialisms’ possessive logics.<sup>70</sup> As Desbiens notes, “The media discourse around James

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<sup>70</sup> I do not intend to undercut the significant re-shaping of this landscape caused by the fur trade and the HBC’s eventual selling off of what was then dubbed Rupert’s Land to the Crown. While these historical moments represent settler colonial encroachment into the Indigenous territories of the north, the fur trade saw significant collaboration between the Cree, specifically, and trappers for the HBC who required the Cree’s knowledge of the territory. While the region would be incorporated into the presumed sovereignty of the Crown, it was not until the development of the James Bay Project that it is often understood to have

Bay reiterated key elements of a Québécois relationship to place, which was defined, among other things, by the province's history of territorial settlement and expansion through agriculture" (6). Any notion of Indigenous conceptions of place was negated—buried under the weight of concrete and a fervent Québécois nationalism. "The constant iteration of Québécois ideas of land, nature, and identity," writes Desbiens, "worked to integrate James Bay—a land historically inhabited by the Crees—into Québécois national territory" (6). In previous decades the government of Quebec had actually sought to disavow any responsibility for the northern territory, given the presence of the Inuit whom it asserted were an "Indian population" and thus a Federal responsibility under the British North American Act (1867);<sup>71</sup> with the newly established interest in the region, "the Québécois claimed to have been there from the beginning by rewriting the origins of the region through a discourse of discovery, conquest, and pioneering via development" (7). The James Bay Project and the rhetoric that supported it quite literally manifested a settler colonial material worlding of what had been largely untouched since the culmination of the fur trade as distinctly Indigenous ontological space.

As Desbiens makes clear, the establishment of the James Bay Project in the imaginations of Quebec's majority southern population hinges on a modernized narrative of settler colonial nation building—a mode of settler colonialism that Lorenzo Veracini calls "narrative transfer" (2010, 41-43). While narrative transfer works to dispossess Indigenous peoples from their lands through a number of modes, from representing them as primitive or historically backwards, as the victims of history, and/or through settler

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been "rediscovered" and fully brought under the logics of settler colonialism. For further discussion see Kirkey 2015.

<sup>71</sup> See Desbiens 2013, 7-9 and Chapter 1 of her text for a discussion of the history of the northern territory and its relation to the province of Quebec. See also Kirkey 2015.

indigenization—as Kelly’s novel demonstrates through his narrator’s ironic desire for Indigenous environmental knowledge—the James Bay Project, given Quebec’s complicated relation to the larger body politic of Canada, draws heavily on a different means of narrative transfer.<sup>72</sup> The kind of narrative transfer emphasized through the ‘literary dimensions’ of the nationalist rhetoric surrounding the James Bay Project occurs “when a radical discontinuity between a colonial past is emphasized, and references to its “postcolonial” status are made” (Veracini 2010, 42). With the James Bay Project representing a moment of Quebecois national unification and the shoring up of Quebec’s sovereign power through the nationalization of its public utilities, the province mobilized a narrative of postcolonial rebirth in relation to its position within the Dominion of Canada. Veracini writes,

Highlighting an intractable discontinuity between a colonial past and a postcolonial present is thus part of a settler colonial transferist attitude whereby really existing Indigenous people and their unextinguished grievances are seen as illegitimately occupying the indigenous sector of a postcolonial population system. (Indeed, in these cases a postcolonial condition is invoked precisely to unilaterally deny the very existence of a settler colonial system of relationships.) Narrative transfer is then deployed as an instrument of denial. (42)

The effects of this narrative are to ‘transfer’ notions of Indigenous self-determination, and rights to their territory in the James Bay Region away from the Cree and to the jurisdictional powers of a rejuvenated postcolonial Quebec. “This narrative transfer,” writes Veracini, “constitute[s] a crucial passage in an attempt to deny a particular ontological connection linking indigenous peoples to their land” (43).

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<sup>72</sup> This is not to suggest that these other modes of narrative transfer are not operationalized in Quebec, as they are in various ways throughout the settler nation state. Indigenization in Quebec is a particularly powerful mode of narrative transfer in the province, although not one I focus on in this chapter. See for example, Leroux 2018.

The 1960s rallying cry of the Jean Lesage's Quebec Liberals, "Maîtres Chez Nous"—Master in Our Own House—and its location in Québécois nationalist cultural production, represents perhaps the most powerful representation of Quebec's narrative transfer during this period (Desbiens 2013; Dictionary of Canadian Politics). Significantly, the slogan incited nationalist sentiments by "rallying Quebecers behind the nationalization and consolidation of the province's electrical utilities to create Hydro Quebec – a monolithic super-utility to harness the province's hydro-electric potential into a vehicle for massive, province-wide economic growth" (Dictionary of Canadian Politics). The corresponding campaign poster, a clenched fist holding lightning bolts to represent hydropower, worked in conjunction with the narrative of Quebec as masters, taking their home back from the "long history of Francophone subservience to traditionally English-speaking (both English Canadian and American) economic masters" (Dictionary of Canadian Politics). Through this intensified period of Québécois nationalism, Quebec was positioned as autonomous and self-sufficient in relation to the broader Anglo-Canadian nation state, situated as *the* self-determining and progressing nation state, freed from the control of the colonial Dominion. The narrative of colonization is effectively transferred away from the Indigenous population and to Quebec, who have emerged from the colonization of the predominantly British nation state. Quebec becomes postcolonial in this sense, and their relation to the colonization of Indigenous peoples, both historic and ongoing, thus becomes obscured by its postcolonial narrative of national renewal. Given the construction of this nationalist, transferist narrative, the Indigenous peoples of the James Bay Region would not enter into the

imaginings of the Québécois as rights bearing sovereign citizens until they would forcibly insert themselves there.

*The Grand Council of the Crees, Eeyou Istchee, and the (Re)Emergence of an Indigenous Nation*

While the nationalist Québécois narrative of the James Bay Project sought temporal primacy for Quebec through its transferist attitude, Lawson reminds us that within the settler colonial nation state, "the indigene cannot be relegated to something that is merely chronologically prior; the settler cannot merely come at the end of history" ("Proximities" 23, qtd. in Sugars, 85). In this section, I consider what the recognition of Eeyou Istchee and the coalition of the Grand Council of the Crees means in relation to Indigenous water rights in Canada, and more generally, for the resurgence of Indigenous water worlds in territories dramatically remade through settler colonial registers of water. What does it mean for an Indigenous nation to establish a unified political body as a response to mass-scale development in their territories? What is the significance of achieving state recognition of a distinctly Indigenous territory as a means of protecting Cree sovereignty in the wake of hydroelectric development? What happens to the meaning of Indigenous rights if "Aboriginal right and title" are transferred to the Crown in exchange for more specific rights and benefits? What is gained and what might be lost through these responses and negotiations? These are complicated questions and ones that cannot be resolved here; however, it is the goal of this dissertation generally to consider how Indigenous hydrosocial relations and the complex related literary representations of Indigenous resistance are expressed and come into contact with the on-the-ground

politics of Indigenous rights disputes and negotiations with the settler state. As discussed in the introduction, I resist framing these relationships through an oppositional lens of state versus non-state engagement; rather, drawing on legal scholars James Youngblood Henderson and John Borrows, among others, I am interested in how Indigenous law, politics, modes of thought, and ultimately, constitutions of Indigenous water worlds, might emerge inside and outside of this state engagement—how their emergence may or may not alter the shape and terms of that state engagement. The James Bay and Northern Quebec Agreement and the solidification of the political power of the Grand Council of the Crees and Eeyou Istchee that emerged through it and subsequent agreements is one example that reveals the complexity of protecting and etching out Indigenous water worlds in relation to the imposition of settler colonial development.

The decision to fight the James Bay Project was made in 1972 when Cree leaders gathered in Fort George and resolved to travel south to seek an injunction against the project. Feeling threatened by the dams' presence, the Inuit also joined the Cree at this time and on May 3<sup>rd</sup>, 1972, the Cree and Inuit filed a joint legal injunction calling for the stoppage of the James Bay Project (*Kanatewat v. The James Bay Development Corporation*). Justice Albert Malouf decided in favour of the Cree and Inuit on November 15<sup>th</sup>, 1973, finding, “The Province of Quebec cannot develop or otherwise open up these lands for settlement without acting in the same manner that is, without the prior agreement of the Indians [Cree] and Eskimo [Inuit]” (qtd. in Kirkey 2015, 88). The Quebec Court of Appeals promptly ruled in favour of an appeal filed by the James Bay Development Corporation and struck down Malouf's injunction, allowing the James Bay Project to proceed. In order to keep the project on track, the Government of Quebec

began negotiations for a comprehensive agreement to appease the Cree and Inuit (Kirkey 2015).

The JBNQA was signed into agreement on November 11<sup>th</sup>, 1975. Despite the important mobilization of the Cree at the time, many Cree leaders would suggest that the agreement was signed under extreme duress (See Coon Comme 2004, 156; Craik 2004, 166). Mackenzie Kirkey situates the agreement as “officially sanction[ing] the construction and implementation of the mammoth James Bay hydroelectric power project” (2015, 89), and historian Sean McCutcheon suggests that the negotiating position of the Cree and Inuit occurred from the realization that “they could not stop the hydroelectric project” (1991, 55-56).<sup>73</sup> More to the point, Coon Come writes, “Hydro-Quebec held a gun to our heads—the destruction of our lands and rivers continued daily while we negotiated” (2004, 156). Despite the conditions under which they were forced to negotiate, the James Bay Cree fought for significant protection of their lands, waters, and self-determining authority through the JBNQA and the agreements that would follow. An agreement in principle was compiled and negotiated with the government over several years by what would become the Grand Council of the Crees, which represented the nine communities of the James Bay Cree. The Council refused to budge on many issues, including rights over land, rights for hunting, fishing, and trapping, control over education, healthcare and social services. The explanation of the Crees’

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<sup>73</sup> While McCutcheon’s *Electric Rivers* is one of the first complete synopses of the James Bay Project and JBNQA, providing a useful timeline of events and key dates, his treatment of the Cree is generally quite limited. I highlight his suggestion here because it is representative of the general sentiment that Indigenous nations are often forced to negotiate from a position of weakness—a suggestion which, while not always incorrect, glosses over the bargaining and political power that many Indigenous nations hold in such negotiations. For a more complete discussion of the bargaining position of the James Bay Cree, and exactly how they negotiated a hard won deal through the JBNQA, see *Together We Stand Firm* 2010.

negotiating position by Brian Craik, Director of Federal Relations for the Grand Council of the Crees, warrants quoting in full:

Most of the document sets out Cree and Inuit rights to programmes and the institutions to govern themselves. Education, health care, income security for trappers, environmental and social protection, police and justice services, wildlife management, local and regional government and community membership, community and economic development, as well as a regime for land rights, are all included. Compensation was fixed and divided between the Crees and Inuit according to population. In 1982 Cree and Inuit rights in the agreement were confirmed as protected by the Constitution of Canada. (2004, 168)

Their fight for environmental protections, in particular, represented an unusual concept in Canadian rights discourse at the time, which did not consider environmental protections in tandem with the rights of individuals or communities, and was a position that Cree Council Grand Chief, Billy Diamond believes has led the way for environmental thinking in Quebec and Canada more generally (in *Together We Stand Firm* 2010).

The Grand Council maintained that their inherent right to govern was not subject to negotiation and that they would continue to govern themselves in accordance with their own customs and laws. Through the negotiation process, they sought increased protections and recognition of their inherent rights given the encroachment of the James Bay Project, as well as expansion of these rights and monetary compensation. The Quebec government remained resistant to granting the Cree exclusive rights to some 60,000 square kilometres of their traditional territories. Grand Chief Diamond proposed a category system of land allotment and protection, which would guarantee the Cree a large portion of their land base and exclusive hunting and trapping rights throughout the James Bay region, while allowing the James Bay Project to proceed within the lands of another category. The Centre for Indigenous Conservation and Development Alternatives describes the agreed upon land categories as follows: “Category I lands are for the

exclusive use by and administration of the Crees; Category II lands are areas in which the Crees have exclusive hunting, fishing, and trapping rights, but no special occupancy rights; and Category III lands are those shared by indigenous and non-indigenous people” (Centre for Indigenous Conservation and Development Alternatives).

As the hydroelectric project continued to alter the Cree’s way of life in irreversible ways, the aim of the JBNQA for Cree negotiators was to provide protections to Cree traditional practices, while setting the framework for an expanded rights regime and monetary compensation in their territories (Craik 2004; Kirkey 2015). Illustrating the complex tensions between traditional practice and industrial development that marked these negotiations from the very beginning, Diamond remarked during the negotiation process, “Let’s give our people a way of life that they have known all their lives, and that’s the traditional way of life, the life to hunt, fish, and trap. Yet at the same time we give them a life, an opportunity, to enter into the modern industrial society, if they want” (in *Together We Stand Firm*). As I will show below, Diamond’s comments are a long way from the kind of Indigenous place-thought expressed in Hogan’s representation of Indigenous resistance below, emphasizing the potential conflicts between competing Indigenous worldviews and the conditions that often necessitate Indigenous rights negotiations with the settler state.

While the JBNQA provided a framework for this expanded recognition of rights, it would take several decades and two more agreements for the Crees of James Bay to fully realize the kind of self-determination they had negotiated for in the JBNQA. Kirkey asserts that “the JBNQA must above all else be regarded as a preliminary incomplete accord—an accord that, while providing significant, natural resource based, ongoing

revenues to the province of Quebec, nonetheless ushered in significant challenges to the economic, social and cultural practices of the Cree and Inuit Native Peoples and to the physical environment of northern Quebec” (90). Further, in 1991, Grand Chief Matthew Coon Come called the agreement “Canada’s first modern broken treaty” (Grand Council of Crees 1995, 927), a scathing addendum to the popular opinion that the James Bay and Northern Quebec Agreement ushered in Canada’s modern treaty era. While the agreement failed on many fronts over the next several decades, it arguably laid the ground for the Crees of James Bay, along with the Inuit, to halt subsequent hydroelectric projects, and for the Cree to negotiate what in 2001 was referred to as “a new relationship” between the Crees and the governments of Quebec and Canada (Craik,181).

When, in 1989, the province of Quebec announced that it would finish the final two phases of the hydroelectric project (the Great Whale Project and the Nottaway, Broadback, Rupert Rivers Project), the Cree once again resisted development in their territories, citing the government’s inability to live up to the agreements made under the 1975 JBNQA (Craik 2004, 166). The Cree and Inuit managed a successful campaign, garnering extensive support from environmental groups and the American government, who were the slated recipients of hydropower to be produced in these phases. Their public outreach campaign and legal battles in the courtroom led to the cancellation of the second phase of the project in 1995 and eventually to an Agreement in Principle (AIP) in 2001. The terms of the AIP were as follows:

1. A Quebec and Cree commitment to deal with one another on a nation-to-nation basis.
2. The Crees' assumption for fifty years of certain JBNQA obligations of Quebec for Cree community and economic development.
3. Settlement of outstanding Cree lawsuits against Quebec.

4. Quebec's payment to the Crees of C\$24 million the first year, C\$46 million the next year and C\$70 million each year for the next 48 years.
5. Indexation of payments with possible increases, according to increases in the volume and value of mining production, forestry and hydroelectric production from the full extent of the Cree traditional lands in the James Bay Territory.
6. A new regime to regulate forestry, and new logging practices to be implemented in cooperation with the Crees, using mosaic cutting and management of the cutting area on the basis of Cree trapline territories.
7. Quebec's support of Cree involvement in future development.
8. Crees' consent to the Eastmain—Rupert Diversion Project. (Craik, 182)

The AIP led to the 2002 Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec (or what the Parti Québécois government called *La Paix des Braves*), which resolved many of the outstanding issues of the JBNQA, while notably also allowing for the final phase of hydro development to proceed on the conditions that the Grand Council of the Crees had agreed to. Most significantly, the New Relationship agreement was understood by many who had been part of the long battle against the James Bay Project as finally bringing about a partnership of “mutual recognition and nation-to-nation cooperation between the Crees and Quebec” wherein the Crees’ “political status and legitimacy as a distinct nation were acknowledged by Quebec” (Papillon 2011, 120). In short, *La Paix des Braves*, in conjunction with the terms set out initially in the JBNQA has been viewed as returning jurisdictional sovereignty to much of the Cree’s territory in the north (Craik 2004).

### *A Complicated Emergence*

While the James Bay and Northern Quebec Agreement itself is viewed, in many respects, as one more broken, insufficient, or forced treaty agreement by some, or as the successful and hard-won recognition and protection of Cree and Inuit rights in a profoundly threatened northern territory by others, the emergence of a Cree political

force and recognition of Cree territory—the Grand Council of the Crees and Eeyou Istchee (the People’s Land)—even as its emergence occurs in complicated relation to the settler state, cannot be denied. On August 8<sup>th</sup>, 1974, the Grand Council was officially signed into being by the Cree chiefs of the nine Cree communities, and as they discuss in the documentary *Together We Stand Firm*, “people watched as we gave birth to the Cree Nation” (2010). The Creation of the Grand Council of the Crees and Eeyou Istchee represented the first regional entity ever created to speak and act for the Cree—a political organization whose prime mandate was to fight the hydroelectric project, and represent Cree interests into the future. In this sense, the emergence of the Grand Council of the Crees can be understood as *emplotting* the Cree’s own national narrative in the James Bay Region. We can read the “birth of the Cree Nation” in this moment as the enactment of a kind of narrative epic of modern Indigenous nation-building in its own right, necessitated by the imposition of settler colonialism.

This epic enactment—the emplotting of the actions of the Grand Council of the Crees in negotiating the JBNQA and subsequent agreements—is represented most aptly in the 2010 documentary *Together We Stand Firm*. Produced by the Grand Council of the Crees in collaboration with the Cree Naskapi Commission and directed by Franziska von Rosen and Pine Grove Productions, the film is the first in a four-part documentary series chronicling the history of the Grand Council’s political battles and achievements in responding to the James Bay Project. Narrated in Cree and English by Donovan Moses, the documentary begins with the narrator stating, “Our elders have a story to tell us, a story of people who wanted to take this land from us.” The narrative of the documentary unfolds through the depiction of an “epic struggle” (*Indian Country Today* 2011);

described as an “uneven fight between David and Goliath” (Kelly qtd. in German 2011), it juxtaposes the history of the Quiet Revolution and Québécois nationalism in the south that would spark the province’s infrastructural interests in Cree territory to the north, with the rise of Cree political consciousness in a “generation of Crees who were born in the bush” (Coon Come qtd. in German 2011). Including commentary from signatories of the JBNQA, Grand Chief Billy Diamond, Chief Robert Kanatewat, Chief Philip Awashish, Chief Smally Petawabano, Chief Abel Kitchen, and Chief Fred Blackned, along with Grand Chief Ted Moses and Grand Chief Mathew Coon Come, among others, the film provides a portrait of a group of young Cree men who “sought recognition of their people’s time-honoured control over their lands and communities” (German 2011).

With the film’s release occurring as the Quebec government began the implementation of new phases of Plan Nord, an economic development strategy to develop the natural resources extraction sector in Quebec north of the 49th parallel, the documentary takes on an important relevance (*Indian Country Today* 2011). During the film’s first screening in 2011, held at the Montreal Museum of Fine Arts, Mathew Coon Come said, “The opposition of the Crees in the courts to the James Bay Project was the appropriate reaction to decisions that had been made without our consent. It was the only way for us to be heard in Quebec at that time” (German 2011). *Together We Stand Firm* depicts the integral history of the Cree struggle against the James By Project, and also highlights the vital importance of this story being told in a recurring moment of heightened development in Quebec’s north; however, as I will expand on further below, I assert that the film’s depiction of the epic emergence of the Cree nation also situates the struggles of the Grand Council within the complex terrain of a “national culture” that

emerges within and often under the constraints of the colonial context, to draw from Fanon (1963).

This is a complicated assertion. I do not intend to suggest that the Cree Nation can only exist in relation to the settler nation state or that it somehow owes its existence to the James Bay Project. To be sure, the Grand Council of Crees, as represented in *Together We Stand Firm*, and by those who worked on negotiations over the several decades between the 1972 James Bay Project and the 2002 New Relationship, emerged out of the existing strengths of Cree leadership, and centered concern for community protections, with the traditional practices and ways of life of the Crees as key factors in negotiations; however, as Craik notes, “The Grand Council of the Crees was born of the conflict over hydroelectric development in northern Quebec in the early 1970s. Before that time the Crees, or Eeyouch, as they call themselves, occupied Eeyou/Eenou Istchee (the people's land), an area drained by the rivers flowing into eastern James Bay and southern Hudson's Bay” (2004, 166). As Craik makes clear here, the Crees’ relationship to their territories was deeply enmeshed in the waters that surrounded them. Coon Come, gesturing to the notion of Indigenous place-thought that I will discuss further below, similarly notes, “For the Cree people, the land is part of us. My people still live off the land. We are sustained by what it provides; I guess we can say that we are the land” (2004, 155). The imposition of the James Bay Project on the lands and waters of the Crees was an imposition on the Cree people themselves, one which demanded a unified political response that had not been undertaken on such a scale previously. In a sense, the James Bay Project necessitated that the Cree make their presence and ways of life in the Eastern James Bay region legible to the Canadian state. Where the Cree were a people

with distinct governance structures and relationships to their territories, through the formation of the Grand Council of the Crees they would organize and assert themselves as a nation in relation to the settler state. Craik elaborates, “It was in response to this threat to their way of life that the Crees decided to create a Cree governing body, Winnebegoweeyouch Notchimeeweeyouch Enadimadoch, roughly translated as 'Coaster and Inlander Cree Working for One Another's Interests' and known in English as the Grand Council of the Crees” (166). The coming-into-being of the Grand Council of the Crees, and their battle for recognition of Eeyou Istchee, represented a fight for the possibility of a distinctly Indigenous jurisdictional space, wherein the inherent rights of the Cree, their self-governing authority, political orders, and ways of life persist in relationship with settler colonial spatial organizational principles.

The production of *Together We Stand Firm*, its epic story of the emergence of this Cree nation, can be read as an assertion of what Franz Fanon calls ‘national culture.’ *Speaking* from the context of colonial Algeria, Fanon offers a skeptical reading of the role of national culture within “the context of colonial domination” (1963, 177). Fanon writes, “National culture is the collective thought process of a people to describe, justify, and extoll the actions whereby they have joined forces and remained strong” (168); however, he continues, “national culture under colonial domination is a culture under interrogation whose destruction is sought systematically” (171). For Fanon, national culture cannot emerge separately from “national liberation and the resurrection of the state” which he asserts “are the preconditions for the very existence of a culture” (177). While Fanon is speaking from the context of a decidedly different colonial struggle, he is

skeptical of national cultural production that occurs in relation to the colonial state, rather than out of national liberation from the colonizer.

Fanon does, however, highlight the potential for national consciousness to emerge out of the colonial situation, and for this national conscious to give life to cultural forms such as literature, of which the epic is given special consideration. Fanon writes, with the emergence of national consciousness in colonial struggle “oral literature, tales, epics, and popular songs previously classified and frozen in time, begin to change”; “there are attempts to update battles and modernize the types of struggle” (174); he continues, “The epic, with its standardized forms, reemerge[s]. It has become an authentic form of entertainment that once again has taken on a cultural value” (175). The epic narrative of Cree nationhood represented in *Together We Stand Firm*, then, can be read as having cultural value within a Cree national consciousness. “By imparting new meaning and dynamism to artisanship, dance, music, literature, and the oral epic,” writes Fanon, “the colonized subject restructures his own perception” (176). But Fanon’s necessity for this national consciousness and its national cultural productions to lead to national liberation outside of the context of colonial domination is unwavering. He writes, “we have seen that this energy, these new forms, are linked to the maturing of the national consciousness, and now become increasingly objectivized and institutionalized. Hence the need for nationhood at all costs” (176-177). Thus, the epic narrative of Cree nationhood in relation to the James Bay Project may represent only the rise of national consciousness for Fanon, but not the emergence of nationhood freed from the colonial relation.

Susan Wright offers a different potentiality for national culture that is perhaps more attentive to the nuances of the *settler* colonial situation. In her 1998 article “The Politicization of Culture,” Wright traces the ‘old’ and ‘new’ ways that culture has been mobilized in anthropology, and how this mobilization extends outward to different domains such as right wing political organizations, corporate use, and oversees development. Drawing on the example of the Kayapo peoples of Brazil, she explains how Indigenous peoples in particular have mobilized politically by drawing on the “idea of culture as a contested process of meaning-making” (9), asserting their own definitions of ‘culture,’ and “using it to set the terms of their relations with the outside world” (14). As the Kayapo prepared to meet with Brazilian government officials to oppose construction of the Altamira dam, “they choreographed themselves for the western media in order to gain support of the western audience and add pressure on the government” (14). This cultural performance became part of a larger strategy to exploit the same policies usually associated with dependency, to obtain resources for their people and resist oppression. Wright writes, “these now-consummate ethnic politicians had learnt to objectify their everyday life as ‘culture’ (in the old sense) and use it as a resource in negotiations with government and international agencies” (14). Where missionaries, government officials, anthropologists and non-governmental international organizations had spent more than forty years using “the concept to define an entity that could be acted upon, producing disempowerment and dependency” among the Kayapo, Wright explains how, “the Kayapo strategy to wrest control of this concept from missionaries and government officials and turn it against them was part of a struggle not just for identity but for physical, economic and political survival” (15). Thus, the formation of the Cree Nation,

the enactment of its epic narrative represented in *Together We Stand Firm*, could be read as the strategic mobilization of national culture within the confines of the settler state.

Mario Blaser, Harvey Feit, and Glenn McCrae similarly argue “that Indigenous peoples’ agency and their alliances with wider movements themselves can have, and sometimes have had, transformative effects on the emergence of alternative structures of governance that are not rooted in globalizing development” (2004, 2). The efforts of the Grand Council of the Crees, along with the Inuit, particularly in relation to the second ‘Great Whale Project’ phase of hydroelectric development were successful in bringing the concerns of a localized struggle to bear on levels of American government that otherwise prioritized globalized trade. The Cree and Inuit communities at Great Whale emphasized their relationships with the waters effected by the desire for exported hydropower through an effective public outreach campaign. As “a symbol of the cooperation of the two communities in their opposition to the project,” they constructed an eight metres long vessel that was made to look like a kayak in the stern and a canoe in the bow, called the odeyak (from owut, ‘canoe’ in Cree, and kayak from Inuktitut) (Craik, 173). They paddled the odeyak to New York City and arrived on Manhattan Island at the end of April in 1991. Their journey attracted media attention in Canada and the United States and helped the communities gain support from Green Peace activists, US legislators, and even achieve divestment from ivy league institutions, such as Dartmouth, Tufts, and Harvard (Craik 2004). Legislation was passed in Massachusetts and Vermont requiring the project to be subject to rigorous environmental assessment. New York state decided to undertake a profitability assessment and determined the costs and risks were too high (See *Together We Stand Firm* 2010; Craik 2004; Evans-Brown “Powerline”

2017). States that had initially championed the influx of cheap electricity coming from Canada's north began pulling out of the project due to pressures from environmental groups, and from the Crees and Inuit themselves. This is a narrative of successful intervention undertaken by the Grand Council of the Crees, the Inuit, and their allies. It is a narrative of alliance building, and of a burgeoning Indigenous political power—one which forces the recognition of their rights on their own terms, and which ensures projects affecting the lands, waters, and ways of life are negotiated in good faith. But this is of course not the only narrative that emerges out the James Bay Hydroelectric Project or the signing of the JBNQA.

Despite being part of this above narrative—indeed fighting for many of the aspects that make it such an epic story of Indigenous resistance—former Cree Chief Mathew Coon Come retrospectively articulates a decidedly different narrative of Indigenous rights in relation to the mass-scale remaking of Indigenous water worlds. He writes, “Our treaty is often referred to as the first modern land-claims agreement in Canada. It is very long and very detailed, but we are learning that it is actually not very new. . . . The reality is that our treaty is built on the same structure as all the treaties that went before it. Its foundation is the extinguishing of our Aboriginal rights” (2004, 159-160). Even with Cree self-government a key aspect of the JBNQA and subsequent agreements, Coon Come notes, “At present, in my opinion, First Nations do not exercise self-government. We exercise a form of self-management, because as long as we are receiving government handouts we are administrating the policies of the government. In other words, we are forced to become administrators of our own poverty” (162-163). Coon Come's sentiments in the wake of the seemingly successful negotiations between

the Grand Council of the Crees and the Quebec government that brought about the 2002 New Relationship Agreement emerge out of the lived realities in his Cree homeland, and the undeniable effects of those hydro-dams permitted to proceed in Cree territories. Of one of the programs negotiated through the New Relationship agreement, he notes,

We have realized that programmes to build hunters' campsites beside the reservoirs are not worthwhile, because the animals do not live there. One hunter discovered a beaver lodge twenty feet high on the edge of a reservoir. The beavers had kept building higher to keep ahead of the rising water all summer. When the winter came, the water was drawn down and the beavers froze. (158)

Coon Come's words here, in a similar fashion to Linda Hogan's writing, as I will show below, bring us back to the lands, waters, human and non-human beings most affected by settler colonial development in Indigenous territories. Where the paddling of the odeyak to New York City was an attempt to bring the plight of the Cree and Inuit into the hearts and minds of politicians, activists, and citizens further south, Coon Come expresses the devastating consequences of hydroelectric development in the north despite the supposed success of the Cree and Inuit campaigns for recognition as a nation, and their negotiated "political autonomy" or what is often called "self-government." In other words, the achievements made in terms of political autonomy and self-governance do not necessarily extend to all scales of interaction in the region, and in particular, to the human and no-human interdependencies of which the dam's development has had the greatest effects.

Perhaps most succinctly capturing the stakes of negotiating Indigenous rights and protections for their lands and waters at the state level, Coon Come writes, "The legal techniques that have been applied against us when we have been 'in the way' of development are actually more diabolical than the flooding and relocation. These are the

doctrines of extinguishment and terra nullius” (160). I have tried to emphasize the Crees’ experience with the James Bay Project and the emergence of the Grand Council of Crees as that which has not been circumscribed exclusively through or by the courts and that strong and savvy leadership, along with the collective will to defend their territories, and a non-negotiable assertion of their inherent rights are what structured the Cree engagement with the James Bay Project; however, Coon Come, a key player in that engagement, articulates exactly what the Crees are up against in these state negotiations: the presumed sovereign jurisdictional power of the Canadian state and its provinces, their logics of possession, and the colonial doctrines that undergird them. Coon Come’s sentiments rupture the narrative epic of the Grand Council of the Crees, illustrating how it may only represent the role of minor antagonist in the epic that indeed belongs to the Quebec national project. The potential of national culture and for the rise of a national consciousness is a narrative that has been effectively transferred to Quebec through their national emplotment as a post-colony, and the relation of this emplotment to the northern territories of the Cree. In this way, the actions of the Grand Council of the Crees and their epic narrative of nation building in *Together We Stand Firm* are circumscribed by Quebec’s transferist narrative. I do not suggest, however, that the Grand Council’s emergence and response to the James Bay Project was not necessary or successful in many respects; rather, its limitations illustrate the power of the state to set the terms of negotiation, the illegibility of Indigenous rights under the conditions of settler colonial transferist narratives, and ultimately the extent to which settler colonial water worlds will continue to impede the remaking of Indigenous ones, even amidst hard-won rights negotiations.

Importantly, and as Coon Come makes clear, the outcomes of the Grand Council's agreements with Quebec and Canada gesture to the absences within the narrative epic of Cree nationhood. He writes, "Our people and our societies have been patient and resilient in the face of these policies and practices of dispossession and discrimination. Our people's identities, economies and ways of life have survived, and our societies are developing in important ways. All the credit is due to the courage and spirit of our elders and our women and our youth" (160). Coon Come's turn to the Elders, women, and youth of Eeyou Istchee signals an acknowledgement of the important voices often in the background of the narratives of determined Cree leaders and aggressive negotiating and campaigning tactics; they are the voices that these leaders often consulted, sought guidance and affirmation from, and whose consent they required to move forward; these are the perspectives of how to live with water, how to care for the land and animals, foster kinship relations, and how to maintain a distinctly Cree way of life in relation to the places that demarcate a Cree homeland, and that often do not find their way into the language of legal agreements (see *Together We Stand Firm*; Coon Come 2004; Craik 2004; Feit 2004). Put another way, and as Indigenous feminist thinkers have noted, the voices of Indigenous women are often made illegible in interactions with settler state institutions, which have tended to cultivate a male comprador class (see Lawrence 2004). In this way Coon Come's sentiments anticipate Linda Hogan's narrative representation of Indigenous resistance to mega development projects in their waters, and her particular emphasis on Indigenous women.

I turn now from the James Bay and Northern Quebec Agreement and the emergence of the Grand Council of the Crees, to Hogan's literary representation of

Indigenous kinship relations and the role of Indigenous women as water protectors in responding to the devastation of the James Bay Project. I do not intend to compare the political response of the Cree to Hogan's literary representation in a way that emphasizes deficits and deficiencies of one response or representation over the other; rather I aim to emphasize the nuances and complexities, the multiple fronts and lines of flight that are necessary to, and which are already being undertaken in, the remaking of Indigenous water worlds.

### **Remaking Indigenous Water Worlds in Linda Hogan's *Solar Storms***

In this section I explore how Linda Hogan's *Solar Storms* figures and represents the James Bay hydroelectric conflict. As I discussed above, the emergence of the Grand Council of the Crees has been documented, at least in part, as a kind of narrative epic, and in the epic tradition that foregrounds heroic masculinity of Cree male leaders—the signatories of the JBNQA. Hogan, alternatively, offers a narrative form of resistance to the James Bay Hydroelectric project through foregrounding the identities, cultural knowledge, and political action of Indigenous women. As Cheryl Suzack notes in her 2017 text *Indigenous Women's Writing and the Cultural Study of Law*, “Gender justice activism by Indigenous women writers is paramount to the progressive formation of an Indigenous community's political, social, and cultural justice goals and to its realization of community decolonization” (6). Hogan's novel figures the resistance to the James Bay Hydroelectric project through the centering of Indigenous women's relationships to family, cultural knowledge, and their unique connections to their territories—specifically

the waters that run through them. Drawing on water's significance both in Indigenous literature and in theorizations of Indigenous women's centrality in creation more generally, Hogan mobilizes water as a means through which to examine how Indigenous women—a demographic largely left out of the narrative of the Grand Council of Crees—respond to the James Bay Hydroelectric project and the imposition of settler colonial water worlds—how, in Suzack's words, "Indigenous women's identities and cultural knowledge are foundational to social reform" (6). As such, Hogan represents a different lens through which to understand the meaning of Indigenous rights in relation to mass scale settler colonial development projects, how they affect Indigenous peoples relationships to their cultures and territories, and how Indigenous peoples might respond in ways not circumscribed by the imposed legibility of the settler nation state.

### *Water in Indigenous Literatures*

Hogan's foregrounding of water in her text, as both a material site of analysis and as a metaphor explored through the novel's narrative form—a form which emphasizes the importance of kinship relations and Indigenous women's solidarity across interconnected Indigenous territories—draws on a breadth of Indigenous literary expression concerned with the role and power of water in Indigenous culture and political action. In a general sense, Indigenous literatures often offer important interventions into land and water rights discourse in the settler colonial nation state. In particular, representations of water within Indigenous literature make important claims in relation to Indigenous water law and governance, while expressing Indigenous experience, culture, and the world views necessary for the resurgence and continuance of assertions of Indigenous sovereignty. As

the late Jo-Ann Episkenew writes, “Indigenous literature respond[s] to and critique[s] the policies of the government of Canada” and “also functions as a medicine to help cure the colonial contagion by healing the communities that these policies have injured” (2009, 2). In a sense, we can read Indigenous literary expression as an anecdote to the “literary land claims” made by settler literature outlined in Margery Fee’s 2015 literary study on how early settler literary expression has worked to stake claim to Indigenous lands. Hogan continues an Indigenous literary tradition wherein expressions of Indigenous epistemologies and ontologies, and the connection between identity, culture, politics, and territory are conveyed fundamentally through cultural production, which circulates today, in significant part, through the institutions of literature. These expressions are not merely symbolic, as Shari Huhndorf notes in her discussion on space in contemporary Indigenous literature: “Placing contemporary Indigenous cultural production in [the] tradition of spatial representation illuminates its fundamental political engagement with ongoing territorial disputes”; she continues, “Specifically by narrating suppressed histories of Native occupation, the violence of conquest, and Indigenous understandings of territory, culture lends moral and political weight to Indigenous claims as it challenges the appropriation of land as property” (2014, 362).

Much of Hogan’s writing focuses on the protection of Indigenous waterways, and the historical and legal challenges that have faced her Chickasaw community in Oklahoma. The Chickasaw and Choctaw tribes of Oklahoma had been in a decades long legal battle for comprehensive water rights in their tribal territories and co-government agreements over shared waters in Oklahoma until 2016, when an agreement was reached between the Chickasaw and Choctaw Nations, the State of Oklahoma, and Oklahoma

City (Wertz & Layden 2016). As with many Indigenous nations involved in land and water rights disputes, this more recent legal success marks a small gain within a historical context of Indigenous rights and sovereignty denial. It is within this long history that Hogan constructs a narrative around water rights that looks both forwards and backwards, illustrating the connections between colonialism, cultural continuance, and ongoing Indigenous rights struggles. Indeed, as Lindsey Claire Smith and Trever Lee Holland state, “Hogan’s foregrounding of water as key to sovereignty in her works reflects her Chickasaw ancestors’ close association with waterways from earliest accounts” (58).

Indigenous literary representations such as Hogan’s foreground Indigenous peoples relationships with water in ways that contrast and offer alternatives to the logics of possession put forth by writers like Moodie, and more specifically, the flexibility of late liberal settler colonialism and its limited modes of recognition-based politics, such as that dramatized in Kelly’s *A Dream Like Mine*. Speaking from the US context, Smith and Holland suggest that, “water accentuates Native peoples’ long-standing environmental stewardship of their homelands, which is their foundation for counteracting nontribal control” (2016, 59). Images and representations of water in Indigenous literatures “capture [the] investment in Indigenous peoples’ relationships to the natural world, which express both political and spiritual sovereignty” (57). Water has been an important motif in countless Indigenous literary narratives, from the novels of Thomas King, to the multi-genre work of Leslie Marmon Silko in *Sacred Water*, and the diverse collection of Indigenous poetry on water issued by the Indigenous World Forum on Water and Peace 2014, titled *Indigenous Message on Water*. The winter 2016 issue of the *Malahat Review* on “Indigenous Perspectives” showcased a breadth of emerging and established

Indigenous writers, many of whom foreground water and water rights in their fiction and poetry, dealing with issues such as the Site C Dam in British Columbia (Knott), the complicated place of water in a remote Cree reserve (Webb-Campbell), and water's relation to missing and murdered Indigenous women and girls (Naponse). Several short stories of Mississauga Nishnaabe author Leanne Simpson also foreground Indigenous water rights, particularly in relation to her home territory of Nogojiwanong (Peterborough) (2014).

Water has an important place within this Indigenous literary expression, and as I will show through Hogan's novel, often serves as the catalyst for larger articulations of Indigenous rights. For Haudenosaunee scholar Kaitlin Debicki, the river in Thomas King's *Truth and Bright Water*, for example, "speaks to the interconnection of all life and to our shared interdependence with the Earth" (2015, n.p.). Similarly, King's *Green Grass, Running Water* mobilizes the trope of the hydroelectric dam to call "attention to the political history of dam construction and highlight[s] how power relations underlie geographical places and landscapes" (Lousley 2004, 12). King dramatizes the construction of the Old Man River Dam in Southern Alberta, built on the lands of the Piikani First Nation without their consent, and layers its meaning by naming the fictionalized dam "Grand Baleen," a reference also to the Great Whale phase of the James Bay hydroelectric project (Lousley 2004). Through ecological and supernatural forces the dam ultimately bursts as King highlights the power of water and its relation to Indigenous cosmologies and political resistance. In Silko's *Sacred Water*, water is similarly foregrounded to express "an Indigenous sense of place" and "rework[k] the visual conventions of landscape to represent the sacred, historical, and social dimensions

of land and to oppose the notion of empty space that rationalizes imperial expansion” (Huhndorf, 270). In Darlene Naponse’s short story, “She is Water,” the water in the protagonist’s territory represents what Zoe Todd has called a “paradoxical kind of kin” (2017, 204), weaponized against Indigenous bodies in certain places and moments, but ultimately a complex flowing system that both resists and carries with it settler colonial violence. These texts, among many others, centre water as a means of expressing Indigenous notions of place and ways of knowing, the diffuse and powerful effects of colonialism, and the possibilities for assertions of Indigenous sovereignty in relation to land and water rights that emerge from and between Indigenous communities, rather than through state engagements.

Contributing to this tradition of foregrounding the power, complexities, and paradoxes of water in Indigenous literature, Linda Hogan’s novel *Solar Storms*, depicts Cree (and to a lesser extent Anishinaabe, Inuit, and Chickasaw) peoples’ historical relationship with water and their fight for water rights in the wake of the massive hydroelectric project in the James Bay Region of Quebec. Beginning in disputed territory between Canada and the United States and progressing through rivers and lakes toward the Canadian north, across various Indigenous nations and tribal lands, ultimately to the territories of the James Bay Cree and Inuit, *Solar Storms* explores important questions regarding jurisdiction, water governance, kinship, and the role of Indigenous women in the resistance of settler colonial development projects. Through its formal qualities, *Solar Storms* emphasizes the paradoxical nature of water, mobilizing it as a complicated metaphor that elucidates both water’s material power and vulnerability, and how this materiality is connected to us as subjects. In *Solar Storms*, water is figured

metaphorically and symbolically as a means for fostering kinship relations and the production of Indigenous knowledge; it is also figured as both the physical means through which settler colonialism has eroded these kinship and knowledge structures, and as the literal pathway to their resurgence. Through these complex and often paradoxical registers of water, Hogan's narrative threads representations of ancestral knowledge, traditional laws, familial bonds, trauma, colonialism, and contemporary Indigenous resistance to illustrate the interconnection of Indigenous culture, politics, and history—a relational complexity that I argued in chapter two is foreclosed upon in liberal environmentalism, and which, as I show above, is largely circumscribed by the Grand Council of the Crees' legal negotiations at the state level.

In what follows, I focus on three related themes through which Hogan examines the paradoxical registers of water that she represents as integral to the remaking of Indigenous water worlds in the midst of mass-scale hydroelectric development: Indigenous kinship relations and the significance of place-based knowledge; the unknowability of water and its relation to Indigenous epistemologies; and the integral role of Indigenous women in the re-making of Indigenous water worlds. While these themes are, in some sense, in the background of the efforts of the Grand Council of the Crees and their political interactions with the Canadian state, Hogan's literary representation reminds us of the philosophies, relationships, and worldviews that undergird the necessity of this political work. Her figuration of Indigenous struggle (re)introduces the complexity and importance of Indigenous hydrosocial relations into Indigenous rights struggles with a Canadian state that has largely, as I have argued, rendered these relations inconsequential and illegible. In short, rather than offering an

alternative to Indigenous-state negotiations, and the risk of Indigenous rights extinguishment that may result from them, Hogan gives dimension and depth to Indigenous resistance of settler colonial development projects, while offering a careful exploration of the foundational relationships with water that are necessary for the remaking of Indigenous water worlds.

*The Kinship of Indigenous Place-Thought*

Linda Hogan is a Chickasaw writer and activist, whose novels, plays, poetry, and essays have positioned her as one of the foremost Indigenous ecofeminist writers in the United States. Hogan holds a complicated place within Indigenous ecocriticism. She has been celebrated for narrating an inclusive environmental ethic between humans and non-humans (Altindis 2017), and promoting a kind of pan-Indigenous stance, incorporating and even adopting the perspectives of many ethnic and tribal identities in her writing (Gaard 2000; Schultermandl 2005). “This inclusivity, however” write Smith and Holland, “has also led some to question the effectiveness of Hogan’s environmentalism” (57). Ernest Stromberg (2003), for example, suggests that Hogan’s representation of Tribal and First Nations of which she is not a member has overshadowed “her attempts to affirm political Indigenous sovereignty” (qtd. in Smith and Holland, 57). While debates on the potential and implications of pan-indigeneity are beyond the scope of this chapter and dissertation, Hogan’s representations of water within the context of Chickasaw water rights, through the resistance of the James Bay Cree, and across a vast geographical landscape, points to important commonalities in Indigenous assertions of sovereignty and law within the context of water rights, which are not bound by national borders as they

affect Indigenous nations in various ways, upstream and downstream. For Hogan, water's fluidity necessitates a relationality of Indigenous political struggle against settler colonial development—what in this section, drawing on the work of Vanessa Watts and Leanne Simpson, among others, I am calling a *kinship of place-thought*. A kinship of place-thought extends Hogan's emphasis on place-based relationality to the necessary political and human/nonhuman alliances required to resist hydroelectric development from the source of development to the many communities affected downstream.

Hogan's novel illustrates that the re-making of Indigenous water worlds means grappling with both the significant place of water in Indigenous cultural, political, and legal orders, and the ways in which lands and waters are connected holistically within Indigenous worldviews. Her narrative foregrounds Indigenous place-based theory and politics that emphasize a relational and inextricable inter-dependence between Indigenous culture and the non-human environment, and that treats land and water through grounded engagement. This emphasis on what has been called Indigenous place-thought (Watts 2013), and what has also been referred to as “grounded-normativity (Coulthard 2014), or “land-based pedagogies” (Simpson 2014) in conjunction with an emphasis on kinship relations across nations and territories, is the basis of Indigenous political resistance in *Solar Storms*, and works to support the Indigenous legal orders intended to guide Indigenous relationships to their lands, waters, and to each other.

*Solar Storms* offers a fictional account of the conflict between the James Bay Cree and the Government of Quebec over the development of a massive hydroelectric project in the James Bay region of northern Quebec, telling this narrative much differently than the epic version depicted in *Together We Stand Firm*. Set in 1972, the year the project

commenced, *Solar Storms* begins in a region in northern Minnesota, bordering the province of Ontario, called the Boundary Waters. The Boundary Waters, a reference to the real region in Minnesota, is made up of a series of islands inhabited mostly by peoples of Cree and Anishinaabe descent. The islands form a region, known as “the Triangle” which “had long been in dispute between Canada, the United States, and tribal nations” (66). The novel begins with seventeen year-old Angel Jensen returning to see her maternal grandmothers and to her birthplace in the Boundary Waters, an island called Adam’s Rib, after spending most of her life in a succession of foster homes in the American South-West. Angel contacted her great-grandmother, Agnes, after finding her name in court records and received message back to “Come at once” (Hogan 23). Meeting her great-grandmother Agnes Iron, her great-great grandmother, Dora Rouge, and Bush, her grandfather’s abandoned first wife who had cared for Angel as a baby, Angel is immediately brought into the knowledge, protection, and acceptance of Elders she had only known as a young child. Bearing the emotional and physical scars of her mother Hannah’s abuse, as well as years of community separation and inadequate foster care, Angel sets out on a journey of cultural, communal, and personal renewal.

The narration initially remains elusive in explicitly defining the nationhood of each of the characters, stating simply, “The first women at Adam’s Rib had called themselves the Abandoned Ones. Born of the fur trade, they were an ill-sorted group. Some had Cree ancestors, some were Anishinaabe, a few came from the Fat-Eaters farther north” (28). Dora-Rouge seeks to return to her ancestors, “the Fat-Eaters,” a veiled reference to the Inuit, also affected by the James Bay Project, while Agnes and Angel refer to their northern destination in the novel only as a return to their traditional territories—implicitly

the territory of the James Bay Cree (Eeyou Istchee). Bush is the only character immediately and explicitly identified through her Indigenous nationhood as an outsider Chickasaw woman who had married into Angel's family at Boundary Bay. While some read Hogan's ambiguous representations of Indigenous nationhood as problematic, as mentioned above (Stromberg 2003), Desiree Hellegers alternatively writes, "The communal narrative threads together the voices of three generations of women in a mixed family, which includes Cree, Anishinaabeg, Chickasaw, and European ancestry, as well as members of a fictionalized tribe known as the "Fat-Eaters," similar in many respects to the Inuit" (2). I follow Hellegers' emphasis on the significance of this communal narrative, as it unites multiple Indigenous communities and nations, through the connections between female generations, the common plight of water rights, and the threat of upstream development in order to flesh out the commonalities of Indigenous hydrosocial relations and the political potential of intergenerational and inter-tribal kinship ties. I thus argue that Hogan's narration of diverse Indigenous identities offers a kind of supra nationalist version of Indigenous water politics— moving between Indigenous nationhood and the significance of its specificity in relation to James Bay, but without falling into its traps of boundedness and epic political narratives of nationhood that do not account for the complexity of Indigenous water worlds upstream and down.

Indeed, despite Hogan's inclination to write ambiguous Indigenous national identities, *Solar Storms* is a novel predominantly about the relationship between place, Indigenous women's identity, and politics. Rather than limit these relationships to specific communities, historical contexts, or fixed geographical locations, Hogan explores notions of kinship, belonging, and common politics through process and

journey. Where Hogan's protagonists have been cut off from their culture, homelands, and histories in various ways, their connection to place and identity is enacted through ongoing processes of discovery, or rediscovery of their traditional territories—territories which span from the northern United States to northern Quebec. Hogan's representations of expansive Indigenous territories resist processes of settler colonialism that would understand Indigenous peoples as fixed on reserve or reservation. The lands and waters through which Hogan's protagonists journey intersect with the knowledge and histories of other places and Indigenous nations, illustrating the requirements for a kinship of Indigenous place-thought as Indigenous peoples traverse and reclaim territories across Turtle Island. Hogan's emphasis is thus on reconnection in the wake of the imposition of settler separations and boundary-drawings.

In her article "Indigenous Place-Thought & Agency Amongst Humans and Non-Humans," Haudenosaunee and Anishinaabe scholar Vanessa Watts puts forth a theoretical framework premised on the significance and sacredness of place and environment in Indigenous cultures. Drawing on the Haudenosaunee creation story of Sky Woman, Watts' perspective is an "attempt to reaffirm [the] sacred connection between place, non-humans and humans in an effort to access the "pre-colonial mind"" (2013, 20). Watts writes, "Place-Thought is based upon the premise that land is alive and thinking and that humans and non-humans derive agency through the extensions of these thoughts" (21). For Watts, place-thought is an understanding of the world derived from Indigenous creation stories, and through which Indigenous peoples organize their relationships to their cultures and territories. Within the Haudenosaunee and Anishinaabe traditions, place-thought is best expressed through the creation story of Sky Woman. Relating the

Haudenosaunee story of Sky Woman to the very similar Creation Story of the

Anishinaabe, Watts writes:

Amongst the Anishinaabe, a similar history is shared. Leanne Simpson (2011) retells the Anishinaabe Creation Story, within the historical framework of the Seven Fires of Creation. The two fires that I would like to relate to the idea of Place-Thought, is the Fifth and Sixth Fire. In the Fifth Fire, Gizhe-Mnidoo (the Creator) placed his/her thoughts into seeds. In the Sixth Fire, Gizhe-Mnidoo created First Woman (Earth), a place where these seeds could root and grow. (21)

For Watts, these stories—what she is careful to also call histories—articulate the “common intersections of the female, animals, and the spirit world, and the mineral and plant world” (21). Haudenosaunee and Anishinaabe cosmologies or world views arise from the “literal and animate extension of Sky Woman’s and First Woman’s thoughts” (22). Put another way, these Indigenous cosmologies are rooted, quite literally for Watts, in the ground; the seeds (thoughts) planted from the Creator root and grow from First Woman/Sky Woman (the earth), extending these thoughts to those who interact with the lands in which they grow. To interact and learn from the land is thus to interact and learn from the Creator, from Sky Woman or First Woman. As the creation stories suggest, these thoughts are deeply enmeshed in the land, and are transferred to, or embodied in every living thing that takes its sustenance from the land. Thus, for Watts, thought cannot be abstracted from a particular place and the connections formed in that place—between humans and non-humans—because thought arises from place interdependently, through the spiritual, in Indigenous “stories/histories” (26), the material, in the land, and, in particular for Watts, through the feminine, through the role of First Woman, Sky Woman, and the subsequent role of all women in reproducing and carrying this knowledge. The land and the people are interconnected, and therefore the land is that from which Indigenous peoples derive their worldviews, philosophies, legal orders, and principles.

Drawing on Syilx writer and activist, Jeannette Armstrong's poem "Blood," Daniel Coleman similarly examines how Armstrong "presents Syilx cultural identity as organized by a multigenerational, intimate, interdependent, and sacred connection to a specific land and place, so that the blood of the people is described as the life-force of the earth" (61). Coleman draws on Battiste and Henderson to emphasize the significance of foregrounding Indigenous relationships to their land base further, writing, "Indigenous cultures interact with "intelligent essences" in "ecologies that are alive with the enduring processes of creation itself," living processes that are understood to be sacred and cannot be reduced to concepts conveyed by English words such as "social construction," "essentialism," and "representation," or the positivist categories and definitions of human legislation" (Coleman, 62-63). Thus, for a writer like Armstrong, notions of "blood" and "land" in her work "are envisioned as real, interdependent, life-forces that cannot be abstracted from people and place" (63). Where these ideas arise from a particular Syilx worldview in Armstrong's case, their expression is via an inextricable connection to the *lands* with which this worldview interacts. While Hogan's inclinations toward a pan-Indigenous approach in her literature have been viewed by some as obscuring nation-specific contexts (Stromberg 2003), her emphasis in *Solar Storms* is less on national or tribal specificity, than it is on land and water-based relationality.

Hogan draws on similar grounded notions of Indigenous cultural belonging that is learned and relearned through the protagonists' interactions with their traditional territories, and the knowledge and power they derive from these territories. Various instances of Indigenous place-thought are expressed throughout the novel through traditional stories, expressions of Indigenous law, and the land-based knowledges enacted

by the women, such as Angel's abilities as a "plant dreamer," Bush's knowledge to make do with anything she encounters on the land, or the persistent role of water in teaching the women about their culture and relationships. The first lines of the novel emphasize the significant role of place-based epistemologies —the realization of a place-thought or land-based pedagogy that will structure Angel's journey. As Angel arrives in Adam's Rib, she describes the landscape and its resistance to Western Mapping processes as "the place where water was broken apart by land, land split open by water so that the maps showed places both bound and, if you knew the way in, boundless" (21). Here, Angel foreshadows the knowledge she will gain about the relationship between land and water, and her coming to learn the figurative and literal "way in," which will ultimately lead her toward her political and cultural awakening. Indeed water serves as a unifying force for Indigenous place-thought and the vital material that connects the women to their culture, communities, and political struggles across the sacred and damaged terrain that they travel.

The notion that cultural knowledge is derived from particular places and contexts is nuanced in Hogan's novel through its consideration of kinship relations. While Watts does not incorporate the notion of kinship in her discussion of place-thought, the stories she draws on to give meaning to Indigenous worldviews have been discussed elsewhere in terms of their ability to foster notions of kinship within Indigenous communities (Innes 2014; Simpson 2014). In Rob Innes's examination of the traditional story of Elder Brother in Cowessess First Nation, he explains how the story works to "prescribe[e] behaviours required in the maintenance of respectful kinship relations" (2014, 40). Leanne Simpson similarly uses Nishnaabeg stories to advocate for a reclamation of "land

as pedagogy”; in particular, she tells the story of how Kwenzens discovers the process of making maple syrup by watching how a squirrel interacts with its environment, and shares this knowledge with her mother. Integral to this learning from and through the land is an understanding of the “web of kinship relations that [Kwenzens] is composed of” (2014, 8).

Both thinkers illustrate the integral role of stories in instructing kinship relations—relations which, in turn, offer instruction for how to interact relationally with others and with the non-human environment. Importantly, the kinship relations expressed through these stories, those which convey Indigenous conceptions of place-thought in Watts’ terms, or illustrate the pedagogical capacity of land for Simpson—which indeed express how relationships to and with the land are themselves *kinship* relations—work to support the Indigenous legal orders that are intended to guide Indigenous relationships to their lands, water, and to each other within their territories. As Innes writes, “The telling of stories, such as those of Elder Brother, was a means by which to convey Aboriginal philosophical meanings to the people. . . . Elder Brother stories conveyed Cowessess traditional *law* to the people; and thus functioned as a legal institution” (37-38). Borrows similarly notes how “Stories express the law in Aboriginal communities, since they represent the accumulated wisdom and experience of First Nations conflict resolution” (2002, 14). Speaking specifically in the context of Indigenous water law, Nlaka’pamux lawyer, Ardith Walkhem writes, “Indigenous peoples’ laws have taught us how to live in a way that sustains the water for future generations of all life forms. . . . Indigenous cultures recognize the spiritual nature of water and have developed complex traditions to remind people to honour it” (2007, 28). Walkhem continues:

There are stories that tell of Supernatural beings that live beneath the oceans, and beneath the seemingly calm surfaces of mountain lakes; . . . There are stories that remind us that our ancestors live in, and through, Water and that Water connects us with our past and our futures, flowing through time, sustaining us today as it sustained our great-great grandmothers.

*Solar Storm*'s narrative structure is similarly enmeshed in and expresses the complex traditions and stories that emphasize the necessity of living with water in a sustainable and life-affirming way. The narrative is propelled forward by the waters the women travel through and the connections they make within those waters; the women develop, especially Angel, as she progresses through the knowledge she gains in her relationship to water via story and tradition; and the narrative progresses through the various watery settings, where water is ever-present in ways that connect the characters to their past and futures. Hogan uses story to honour water and offer insight into Indigenous worldviews and philosophy around water that must be extended to the legal orders and institutions that might support Indigenous resistance to the James Bay Project.

The relationships that Hogan foregrounds in *Solar Storms* stretch understandings of kinship and place-thought across community and geographical lines, extending their emphasis on relationality to the necessary political alliances required to resist hydroelectric development that demands a kinship of place-thought from the source of development to the many communities affected downstream. As Innes is careful to note, "Kinship patterns do not exist in a vacuum; they interact with the social environment that surrounds the people who exercise them" (42). Given the cultural and territorial dislocation of a number of the characters in Hogan's narrative, the colonial trauma and histories that have separated the women from their stories and familial ties, *Solar Storms*, particularly through its concerns with water, illustrates the necessity of relating cultural

knowledges between and across communities, Indigenous nations, and geographical boundaries. Water is mobilized by Hogan to teach the women how to hold the seemingly contradictory quality of *boundedness*—the importance of familial ties, ancestral histories, and territorial knowledge—together with its seeming opposite of *boundlessness*—wherein water ensures that these connections do not remain fixed, as it emphasizes the necessity of kinship across borders and boundaries. Kinship is thus enacted throughout *Solar Storms* as process—as the process of making and maintaining relations—with water as the means of facilitating this process.

In discussing kinship in the context of Indigenous law, John Borrows articulates the necessity of an expanded relational understanding of kinship ties, writing, “Kinship operates as a trans-systemic method that brings to the fore the materiality of histories that conjoin different subjects and their respective communities with one another, as well as with Canada as a nation-state and the land it inhabits”; he continues:

Promising to re-compose the Canadian national imaginary, [kinship] also functions as a route that challenges the limits of boundaries, boundaries of sites and of bodies, of literary texts and cultural paradigms; it thus points to reconfigurations of communities and their representations in ways that realign how they have been constructed—without however, abrogating their inherited traditions or inhibiting the circulation of various kinds of asymmetries that are crucial to understanding the production of literary and critical discourses. (2000, 20-21)

Here, Borrows articulates a relationality that holds both the significance of Indigenous cultural paradigms and their connections to the communities and territories from which they emerge, as well as the ways they must interact relationally with different histories, contexts, and even the colonial state that has predominantly worked to subjugate them. This is a conception of kinship relations that demands an understanding of and engagement with the historical contexts, cultural knowledge, ancestral relations, and

Indigenous legal orders that protect and uphold them, but which also does not foreclose upon state interactions or negotiations, leaving room and understanding for the political situations that may necessitate these interactions.

Leanne Simpson reminds us how “Indigenous presence is attacked in all geographies” as “the majority of Indigenous peoples move regularly through reserves, cities, towns and rural areas” and encounter forms of erasure and containment across spaces organized under the logics of settler colonialism. As Simpson states, Indigenous peoples “have found ways to connect to the land and [their] stories and to live [their] intelligence no matter how urban or how destroyed [their] homelands have become” (2014, 23). *Solar Storms* thus presents a framework for a kinship of Indigenous place-thought, illustrating the significance of land and water-based pedagogies, while ensuring they are not limited by settler colonial constructions of Indigenous identity and geographical fixity. Indeed, from the “Abandoned Ones” of mixed descent at the Boundary Waters, to the Inuit peoples the women reconnect with when they arrive in the north, to the “long hairs”— allies, who come from all over to protest the building of dams, Indigenous kinship relations transcend multiple boundaries and borders to resist a common enemy threatening the destruction of Indigenous lands in *Solar Storms*. Notably, Hogan’s vision of Indigenous allyship is a far cry from Kelly’s pessimistic representation of allied relations in *A Dream Like Mine*, which ultimately only centres the settler subject and serves settler self-delusion. Hogan’s fictive representation is in line here with the alliances that the Grand Council of the Crees built in order to resist or negotiate their way through subsequent phases of the James Bay Project. In both figurations, Hogan’s novel and the political work of the Grand Council, the significance and specificity of place is

not overshadowed by the necessity of kinship relations that bring together notions of Indigenous place-thought from across the continent. Rather, by showing the commonalities across Indigenous struggle—the material connections that unite Indigenous histories and their political present—Hogan represents how assemblages of allies engaged in Indigenous place-thought might come together to resist settler colonial development. While chapter two of this dissertation examined the fluidity of settler-colonial liberal governance, its settler subjectification, and its circumscription of Indigenous rights and resistance, as I will examine below, Hogan mobilizes the fluidity of water in her novel toward a reassembling of Indigenous place-thought and kinship ties, once again illustrating the paradoxical and ambivalent nature of water in the settler nation state.

### *Complicating the Knowability of Water*

Water, and engagement with a watery landscape, is the primary means through which Angel and her grandmothers connect to place and politics throughout *Solar Storms*. However, the women's relation to the waters they inhabit and seek to defend is often portrayed as ambivalent and paradoxical. The waterways where Angel arrives “had a history”; they were “a maze of lakes and islands (22).” Angel explains how “The elders said it was where land and water had joined together in an ancient pact, now broken” (21). Where water is revered as a sacred source of cultural knowledge, tied to the spiritual lives of the Indigenous inhabitants of the novel's various regions, it is also marked as obstinate, dangerous, and as a site of conflict and fractured history. It is the unwilling site of ecological and cultural destruction, but also the means through which renewal may be

achieved. Water in *Solar Storms* is both that which acts and is acted upon. It is ecologically precarious, but also resistive; it can be manipulated and misdirected, but not contained. Waters in the novel have been dammed, polluted, and caused to flood, washing away ecosystems and disrupting human and non-human ways of life, mirroring of course, the real effects of the James Bay Project; however, as Astrid Neimanis explains, the power of a “watery world” is that which “resists us as much as we compromise it” (62). Water is a source of power recognized by many people in the Boundary Waters as that which is fundamental to life, but which is itself not subject to the requirements or will of human beings. These waters are, as Angel notes, “strange waters, a geography that was whimsical at times, frightening at others” (Hogan, 121).

Where Kelly’s novel mobilizes water predominantly as an ironic metaphorical mirror of settler identity, and as the means through which the unnamed narrator achieves his political reckoning and regeneration, Hogan mobilizes water as something that the protagonists must learn from and interact with on water’s own terms. Margery Fee encapsulates these different modes of interaction with the landscape in literary expression, writing, “The epistemological difference between seeing oneself as separate from a terrifying nature and identifying with it is huge. How land is represented as living kin or dead matter, home or territory, spiritual resource or real estate is mediated by these differences” (2015, 8). Water is integral not just to the action of the characters, but to the very form of the novel, which mimics a kind of fluid narrative movement up and down the various waterways. Hogan’s protagonists cannot be separated out from a static or threatening landscape; instead they must interact and reckon with the complexity of that landscape in ways that emphasize their relationality to water, and its position as a

“paradoxical kind of kin,” to draw again from Zoe Todd (2017). Again, where Kelly mobilizes water as a metaphor for the fluidity or flexibility of settler colonial governance to offer an ironic portrayal of late liberal subjectification in *A Dream Like Mine*, this fluidity is unmoored from the waters represented in the text in order to emphasize the slipperiness and insidious flexibility of liberal politics, at the expense of the waterways Kelly’s protagonist moves across. As I argued, through the protagonist’s journey up and down the rivers of the unnamed reserve, and despite his romantic desire for Indigenous relationships to the environment, the waterways are rendered as geographically illogical and formally confusing—a formal move that emphasizes the narrator’s very disconnection from the territories he moves through.

Water in *Solar Storms*, is alternatively represented as that which the women cannot be disconnected from. As Angel narrates, “What mattered, simply and powerfully, was knowing the current of water and living in the body where land spoke what a woman must do to survive” (204). Water is represented throughout the novel as that which the women must come to know and understand. It is the means through which Angel is reconnected to her mother and her ancestors, and the traditional knowledge of her people; but water is also sometimes “angry” and “hungry,” a site of political resistance and reckoning that must be respected for its power (62). “The measure of colonial interaction with land,” notes Watts, “has historically been one of violence and bordered individualism where land is to be accessed, not learned from or a part of” (26). Kelly’s settler narrator and Hogan’s Indigenous women protagonists represent each side of this distinction as *Solar Storms* emphasizes how the individual is constituted in part, through

his or her relationships and interactions with water. The women in *Solar Storms* are distinctly a part of the waters they travel through, learn from, and aim to protect.

Reverence for water's efficacious qualities are evident as Angel travels from Agnes's home on Adam's Rib to stay with her estranged adoptive grandmother Bush, on the more isolated Fur Island prior to their collective journey north. On the boat ride between the islands, she encounters the "Hungry Mouth of Water." This significant geographical site is explained as follows:

It was a circle in the lake where winter ice never froze. Young people, with their shiny beliefs, called this place the Warm Spot, and thought it was a geological oddity, a spring perhaps, or bad currents. But the older ones, whose gods still lived on earth, called it the Hungry Mouth of Water, because if water wasn't a spirit, if water wasn't a god that ruled their lives, nothing was. For centuries they had lived by nets and hooks, spears and ropes, by distances and depths. They'd lived on the rocking skin of water and the groaning ice it became. They swallowed it. It swallowed them. But whatever it was, none of them young or old, would go near this one place. They all gave it a wide berth." (62)

The Hungry Mouth of Water has taught many of those living in the region that water "is a god that rules their lives"; it is that which is greater than them and which "had its own needs, its own speaking and desires" (279). The people on these islands have lived with the waters that surround them for centuries, learning its ways, how to make use of it to sustain them, while also recognizing "water's capacity to elude our efforts to contain it with any apparatus of knowledge" (Neimanis 2017, 55). This willingness to respect water's unknowable qualities represents a worldview also in stark contrast to the 19<sup>th</sup> century liberal ordering of the Indigenous landscape, such as that expressed by Moodie's settler colonial logics of possession, which emphasize the desire to contain water in canals, put it to work in steam engines or mills, and treat it as impediment when its qualities escape settler colonial logics of possession. In contrast, Neimanis emphasizes

water's unknowability, writing, "Water babbles in languages we do not fully comprehend, but instead of the violence of translation—into concrete embankments—we might do better just to learn and listen" (63). Neimanis is careful, however, to highlight that in the wake of global climate change, and certainly in the midst of destructive hydroelectric projects, there are certain imperatives to know and understand water; however, such imperatives mean "distinguishing between kinds of knowledge—knowledge that commoditizes and colonizes, knowledge that generates necessary anger and action, knowledge that heals. Knowledge that builds communities or knowledge that fractures them. Knowledge that responds or knowledge that masters" (2017, 57). By the time Angel reaches Fur Island, reflecting on the Hungry Mouth of Water, and the ways that water structures the lives of the people who live in the Boundary Waters, she notes that she is already coming to understand the distinctions between these kinds of knowledges: she "[a]lready . . . believed in the power of water" (Hogan, 64)—a belief that will structure her trajectory as she eventually accompanies her grandmothers north through the system of lakes, islands, and portages to resist the construction of dams in her traditional territories.

Angel learns of and adopts a belief in the vitality of water as she reckons with her own traumatic past and that of her people. In Simpson's formulation, Angel is "coming into wisdom" within the epistemology of her Indigenous kinship connections, which "takes place in the context of family, community and relations" (2014, 7). Once settling into Bush's way of life on Fur Island, Angel reflects on her newfound relationship with water: "I lived inside water. There was no separation between us. I knew in a moment what water was"; she continues, "It was what had been snow. It had passed through old

forests, now gone. It was sweetness of milk and corn and it had journeyed through human lives. It was blood spilled on the ground. Some of it was the blood of my ancestors” (78). The ‘I’ that initially situates Angel at the beginning of the sentence is replaced by ‘it,’ referring to the water, and concludes with her ‘ancestors.’ As Hogan illustrates, water here facilitates Angel’s coming into the knowledge that there “is no separation between” herself, the waters she ‘lived inside’ and the ancestors it connects her to. Here Angel also echoes Jeannette Armstrong’s connections between the “blood of [her] people” and the land, from her poem “Blood,” discussed above. Armstrong writes, “blood of my people courses through veins /coming to me through dust... that is my people/ that is the land” (Armstrong 1991, 16); however, where Armstrong foregrounds land, Hogan situates water as the means through which her characters come to know and fully reckon with both settler colonial violence, and the familial and cultural connections that might enable them to resist it through Indigenous solidarity. In asserting that water is that which has “journeyed through human lives,” Hogan draws out water’s connective potential and the necessity of the journey, both as process of coming into understanding of one’s culture and ancestors, and as literal journey that leads Angel and her Grandmothers to the territories of the James Bay Cree and Inuit so that they can honour water and resist the harm enacted against it by the settler government and the James Bay Project. Drawing again on Simpson, Angel’s “coming into wisdom” through water, “creates communities of individuals with the capacity to uphold and move forward [Indigenous] political traditions and systems of governance” (7).

Through the entanglement of histories, cultural identities, ancestral knowledges, politics, and colonial violence, water is thus simultaneously the means through which

Angel comes to learn about her past and connection to place, and the matter that reflects the trauma of her experiences. The violence enacted against the Indigenous women and communities in the novel, through the starvation inflicted on their ancestors during the fur trade, and, as I will discuss below, the abuse experienced by Angel's mother, which she also enacts against Angel herself, is mirrored in the violence enacted to and through the waters that they travel. Highlighting the fur trade as the genesis of this violence, Desiree Helligers elaborates on the relationships between the destruction enacted on the land and water and the trauma inflicted upon generations of Indigenous women; she writes, "Hogan represents a fictionalized version of the James Bay project as revisiting or replicating on an almost unimaginable scale the long-term, intergenerational effects of overtrapping—including cultural disruption, displacement, food insecurity, and gendered violence—catalyzed by involvement in the European fur trade" (2015, 2). Angel's own trauma is rooted in the experiences of her grandmother Loretta Wing, who is described as smelling perpetually of cyanide. Agnes recalls how through this smell she knew Loretta was from the Elk Islanders, "the people who became so hungry they ate the poisoned carcasses of deer that the settlers left out for the wolves. The starving people that ate bait" (Hogan, 38). Helligers reads this disregard for Indigenous peoples during the fur trade—those very people who aided the HBC in establishing its roots on Indigenous lands—as part of a colonial continuum that leads to devastating projects such as James Bay; she writes, "Hogan's focus on European settlers' use of cyanide to poison wolves links the toxic effects of the fur trade with the ecological, cultural, and human health consequences of James Bay, which included, most notably, widespread methyl mercury contamination" (8).

For Hogan, water is the means through which these colonial histories intersect. The smell of cyanide and the colonial trauma it represents is inherited by Angel's mother, Hannah, who is abandoned by Loretta and subjected to indescribable forms of colonial violence from which she does not recover. Hannah simply appeared to the grandmothers in the Boundary Waters, "she came out of water" and "smelled of the same bitter almonds [as her mother]" (40). Barely communicative, never sleeping, and striking fear into the community, Hannah is a destructive force at Adam's Rib, believed to have inherited the trauma of centuries of abuse. When the women take Hannah to a healer, he describes her as "the meeting place" (101). Dora-Rouge recalls how she understood the meaning of this name in time; she saw Hannah's "life going backward to where time and history and genocide gather and move like a cloud above the spilled oceans of blood," how "that little girl's body was the place where all this met" (101). Hannah eventually gives birth to Angel and inflicts the trauma of this inheritance further down the familial bloodline, scarring Angel's face and almost killing her before Bush saves her from her abusive mother, only to have Angel removed from the community and placed within another colonial apparatus and perpetuator of trauma, the state-run foster care system. Hannah's destructive presence in the novel represents both the coming into relation with one's kin in ways that can be negative just as much as positive, and the potential for water's fluidity and fostering of relationality to be a dangerous force, just as it can be regenerative.

Hogan sketches a line of abuse inherited and inflicted across generations of Indigenous women—abuse that begins with the poisoning of the land and water, that works through time and women's bodies and settler institutions, abuse which ultimately

has the potential to end through the rekindling of community kinship ties and the resurgence of Indigenous place-thought. This place-thought is premised on a human relationship to water which recognizes and reveres water for its paradoxes and potential. If water carries with it colonial trauma and environmental and cultural destruction, it also carries Indigenous knowledge and revitalization. If water fractures communities and poisons, it also facilitates connection and cleansing. Hogan represents water's ambivalence as its strength, rather than the impediment to settlement that Moodie articulated through his championing of a settler liberal order that registers water primary through its use-value in relation to utility and property. Further, *Solar Storms* figures water as a "paradoxical kind of kin," rather than as the mirror of desire for individual regeneration, as in Kelly's ironic portrayal in *A Dream Like Mine*.

By the time the women reach Two-Town, the northern site of protest in the James Bay region, and the environment experiencing the most direct devastating effects from dam construction, they have encountered drowned islands and moose, separate flowing rivers forced into one, and mudflats where lakes used to be. Angel narrates the devastation of the environment as follows:

This was just the beginning of what we were to encounter. With more than one dam being built, much land was now submerged. An entire river to the north had been flooded and drowned. Other places, once filled with water, were dry. Farther on, there were larger vistas and missing islands. Dora-Rouge said the mouths of rivers had stopped spilling their stories to the bays and seas beyond them. (205)

As Dora-Rouge expresses in Angel's description of the dam's devastating effects, more is lost than the obvious impacts on the environment. The waters connect Indigenous peoples to their culture, traditions, and systems of knowledge, and the place-thought and kinship ties that the waters give voice to—the stories that the rivers spill downstream—is

threatened by its diversions and pollution. Coon Come articulated similar concerns in relation to the James Bay and Northern Quebec Agreement, expressing the untenableness of building hunting camps next to dam reservoirs; beavers had frozen to death, unable to manage their dams in relation to the fluctuating water levels, and other animals had stopped coming to these regions (Coon Come 2004). An entire system of human and animal interactions, and the cultural knowledge gained from these relationships, are severed through the dam's effects. Further, not unlike the personal experiences of Angel, the trauma inflicted on these waters is directly reflected in the communities that inhabit them. In returning to her people, the Fat Eaters, Dora-Rouge no longer recognizes her home-community: "The devastation and ruin that had fallen over the land fell over the people, too. Most were too broken to fight the building of the dams, the moving of waters, and that perhaps had been the intention all along" (226). Importantly, however, the realities facing Dora-Rouge's people lead her to ask: "how do conquered people get back their lives?" (226).

While Angel's narration expresses the disruption that settler development can cause to the natural state of water—that water itself can be drowned, that the communication between different water and water/animal/human systems can be interrupted and severed, with communities and entire cultures experiencing the effects of this environmental devastation—she is also careful to highlight the connections between water's resistive agency and that of Indigenous peoples:

[I]n time it would be angry land. It would try to put an end to the plans for dams and drowned rivers. An ice jam at the Riel River would break loose and rage over the ground, tearing out dams and bridges, the construction all broken by the blue, cold roaring of ice no one was able to control. Then would come a flood of unplanned proportions that would suddenly rise up as high as the steering wheels of their machines. The Indian people would be happy with the damage, with the

fact that water would do what it wanted and in its own way. What water didn't accomplish, they would. (224)

Indeed by the novel's conclusion, the resistance to the dam construction on behalf of Indigenous communities mirrors the resistance of the water itself; it is unruly, at times dangerous, moved to violence and conflict by the security forces and construction workers, hired by BEEVCO, the fictive company responsible for the hydroelectric project. The communities face indifference and eventually opposition from the police, government, media, and local non-Indigenous peoples. And still they persist.

This persistence is reflected on both a collective and individual scale, as Angel's journey north to aid in resisting the dam's development also leads her back to the territory of her dying mother, Hannah. Angel is brought to a cabin amidst the backdrop of the landscape's destruction to find Hannah, dying of a stab wound. Recounting what had happened to Hannah, the women tending to her tell Angel, "The beginning of all this is that too many animals are gone" (245). Confused by their ambiguity, Angel learns that Hannah's partner, a trapper, went to collect food for them and never returned. She recalls hearing what had happened there, "the caribou running across the flats as the water surged toward them, knocking them over, flooding their world, their migration routes gone now, under water" (245-246). Hannah took up with another man, damaged from his experiences in the residential school system, and fearful of the darkness that surrounded Hannah. Growing increasingly suspicious of Hannah, he decided he had to destroy her. Hannah's death is connected to the destruction of the lands and waters and the history of colonial violence in the community; however, Angel is also reconnected to her mother, brought back to her, to see her into death, through these same waters and histories of trauma. As her mother succumbs to her wounds, Angel reflects, "It was death, finally,

that allowed me to know my mother, her body, the house of lament and sacrifice that it was. I was no longer a girl. I was a woman, full and alive. After that, I made up my mind to love in whatever ways I could” (251). And then, articulating what her mother has ultimately meant to her in terms that are pointedly aligned with what she has also come to understand of the paradoxical nature of water, Angel says, “Her desperation and loneliness was my beginning. Hannah had been my poison, my life, my sweetness and pain, my beauty and homeliness” (251).

Through Angel’s resolution of her traumatic relationship with her mother, Hogan draws out the intrinsic connections between Indigenous women’s relationships with water and with one another. Leanne Simpson, discussing the responsibilities of Nishnaabeg women to water, explains how the “Nishnaabe-Kwewag learn about water through pregnancy and by giving birth. . . . As we carry the children of our nation through our pregnancy ceremony, we carry them in water, and we become the water carriers” ( 2008, 205). She continues, “The water, Nibi, teaches us about relationships, interconnection, interdependence and renewal” (205). Even though Hannah had been the cause of a significant amount of trauma in Angel’s young life, she also carried her into the world through water. It was water that led Angel back to Hannah, revealing the significance of their interdependence and the renewal of Angel’s own life in relation to this realization. Angel’s realizations here emphasize the complexity and paradoxes of relationality expressed throughout the novel; Angel is given life and understanding, in large part, through the death of her mother, representing a kinship relation that had to be encountered, understood, and ultimately moved past. Hannah’s death, and Angel’s

figurative rebirth, illustrate another instance of the complicated knowing that structures Hogan's narrative, and which is most often facilitated by and through water.

Following the history of the political work of the Grand Council of the Crees over several decades from the singing of the JBNQA to their successful battle in stopping the Great Whale phase of the dam project in 1991 (Cree Regional Authority et al. v. Attorney-General of Quebec 1991), Hogan narrates a sequence of political failure followed by success as the women move from their home territory in the boundary waters to the site of the James Bay Project and back again. Angel and Bush flee the increasingly volatile situation at James Bay and return to Adam's Rib to help the people they left behind. Finding the waters had risen, flooding the islands in the Boundary Waters (due to the dam construction much further upstream in the north) they recognize that they have failed to stop the first phase of the hydroelectric project—an explicit connection to the failure of the James Bay Cree and Inuit to stop the first phase of the James Bay project. However, through collective struggle, the building of community connections, and the unifying of place-based knowledge and resistance that reconnected the women with their communities further north, and with a newfound understanding of water's powers and necessity to protect it at all costs, the second phase of the project is brought to a halt, reflecting the efforts of the Grand Council of the Crees, the Inuit, and their allies in stopping phase two of the James Bay Project. Upon returning to Adam's Rib, and playing on the biblical namesake of the region, Angel reflects, "Beginnings, I know now, are everything. And when Bush and I returned to Adam's Rib, I knew we walked into another day of creation, a beginning" (334). Echoing the struggle of the James Bay Cree and Inuit discussed above, the conclusion of *Solar Storms* resists idealized

representations of Indigenous resistance, depicting the fight as one that must continue beyond the finality of agreements, through the maintenance of kinship relations, and an ongoing engagement with water's paradoxical qualities, even, and especially in those regions already experiencing the negative effects of dam development. The novel concludes with the Indigenous women who have come from Adam's Rib returning there to create something new—a new beginning that could look different than the settler colonial imposition on their waters.

### **Foregrounding Indigenous Women in the Re-making of Indigenous Water Worlds**

The emergence of the Grand Council of the Crees, their negotiation of the James Bay and Northern Quebec Agreement, and the New Relationship that would eventually halt the Great Whale phase of the James Bay Project, is largely expressed in the Grand Council's documentary *Together We Stand Firm* as a male-centric narrative of Cree leaders who rose to the political occasion, standing strong against state power and settler development. This is an important narrative, and the efforts of the Grand Council of the Crees have ensured numerous land protections, community infrastructure, including on-reserve schools and health facilities, and monetary compensation; however, and as Coon Come makes clear above, this narrative sometimes obfuscates that, "All the credit is due to the courage and spirit of [Indigenous] elders and our women and our youth" (2008, 160). Hogan's work, as I have discussed, returns the emphasis to the integral role that Indigenous women in particular play in protecting the waters of their communities.

Indeed, Indigenous women are integral to the political action throughout *Solar Storms*. In a scene that directly implicates the men of the Grand Council of the Crees who negotiated with the Canadian government on behalf of the Cree Nation, Hogan portrays the strength of the Indigenous women who stand up in negotiations with the BEEVCO construction company bosses, namely Bush, and an Elder they meet in the northern community of Two-Town, referred to as Auntie. After Auntie interrupts the meeting, Angel narrates, “Some of us, less strong than Auntie, thought we should sign the papers, sell the land, accept the compensation. I understood this, too, because everything was in short supply there. And some thought so because they believed the government would do what it wanted, anyway” (283). Hogan, through Angel in this way, echoes and sympathizes with the sentiments of Cree leaders discussed above, who felt that they were forced to negotiate with the knowledge that “they could not stop the hydroelectric project” (McCutcheon 1991, 55-56) and to sign an agreement with a “gun to [their] heads” (Coon Come 2004, 156). But Hogan does not end this interaction here. Angel continues to observe the unfolding scene: “Then it was Bush, an outsider, who stood up and spoke, “Why are only white laws followed? This will kill the world. What is the law if not the earth’s?” (283). Angel proudly reflects, as Hogan emphasizes the power and insight of Indigenous women—that which is largely undocumented in the narrative of the Grand Council of the Crees: “This from Bush, the woman I’d always thought so silent. She had a voice, one certain and insistent, true and clear. I was proud of her” (283). Bush articulates what the men in this scene would not. She stands up to the BEEVCO bosses, admonishing their singular conception of the law, and whom and what it aims to protect. Bush also returns us to the centrality of kinship relations and their connection to

Indigenous legal orders (Borrows 2000; Innes 2014). The ‘white laws’ she admonishes here are not part of “the earth’s” laws, and thus not part of the kinship relations that have come to instruct the women’s interaction with the lands and waters they have travelled, those which have helped to understand the earth’s laws that Bush invokes in this scene.

Hogan returns the significance of Indigenous women to the James Bay hydroelectric conflict and the requirements for its resistance, highlighting the imperative of storying struggle in terms of gender, an imperative which has been obscured through the Grand Council’s epic narrative of its Cree leaders. While she acknowledges the necessity of state negotiations, briefly depicting the court room proceedings that helped to stop the second phase of dam construction in the concluding section of the novel, the novel’s focus quickly moves back to the significance of community relations and what they mean for the future of Indigenous peoplehood. The courtroom scene is one of demand for state recognition. An Elder from Two-Town, Tulik, asks Angel to take him to a barbershop, stating, “I want the judge to listen to me. I’ll have to look like one of them” (342). Tulik calls the courthouse “the House of Units, Measures, and Standards, because the questions asked there were how many, how much, how often. How many fish did you catch two years ago? How many did you catch last year?” (343). While Tulik was “direct and honest,” the Western legal demand for this kind of legibility is difficult to meet. Angel observes how, “In the evenings, after his testimony, Tulik looked gray and tired. It wore on him, on all of them, to be treated with derision and ridicule” (343). Hogan’s respect for the Grand Council’s role in these restrictive negotiations is evident in her representation of these proceedings. Angel notes how, “There was little press coverage. But one day there was a small photo in the bottom corner of the page. It was a newspaper

photo of Tulik and the other distinguished men and women, brilliant ones, standing on the front steps of the courthouse” (343-344); however, Hogan concludes the novel by foregrounding the central role of Indigenous women in resisting settler colonial development, the knowledge that they carry and perpetuate, which is often rendered illegible within state sanctioned negotiations, and the integral kinship relations they quite literally give life to.

The final sentences of the novel implicitly reveal that Angel is pregnant. Having married a man from Adam’s Rib in the years since they had returned, Angel narrates, “One day, when the light was yellow, I turned to Bush and I said, “Something wonderful lives inside me.” Bush responds, “Yes. . . . The early people knew this, that’s why they painted animals on the inside of caves” (351). Hogan concludes the novel with an open address: “Something beautiful lives inside us. You will see. Just believe it. You will see” (351). While perhaps an address to the Cree and Inuit of the James Bay region, or to Indigenous peoples resisting settler development more generally, or even to all ecologically-minded readers of her novel, Hogan is clear in one respect: that Indigenous women are the future of their culture, carrying the next generation of Indigenous children into the world, and also the complex kinship relations that are necessary for political action, and maintenance of Indigenous worldviews in the face of settler colonial development in their territories. In her study of Indigenous women’s writing, Suzack highlights how, “Although these women writers imbue their narratives with humour and dignity, they also direct our attention to the negative side of socialized gender expectations and of Indigenous women’s dismissal from political agency” (4). Hogan’s narrative emphasizes the political agency of Indigenous women throughout, and also

concludes by asserting that something like child birth, rather than serving as a limiting gender expectation, is an integral part of women's political agency—an extension of the kinship relations and the legal orders these relations foster. Thus, while Hogan recognizes that the negotiations between Indigenous nations and the Canadian state were necessary to resisting or at least reducing the effects of the hydroelectric project, her project primarily serves to reassert the significance of Indigenous women's political agency into this conflict.

Through the political resistance and resurgence of Angel and her grandmothers throughout the novel, women are depicted as central in the re-making of Indigenous water worlds. This is especially true because the normalization of violence against Indigenous women is part of the same worldview that treats water and land as resources for exploitation, and which also works to erase Indigenous women's political agency as the carriers of Indigenous knowledge and life. As Audra Simpson notes, Indigenous women

represented an alternative political order to that which was in play or was starting to be in play in the late 19<sup>th</sup> Century. They embodied and signalled something radically different to Euro Canadian governance and this meant that part of dispossession, and settler possession meant that coercive and modifying sometimes killing power had to target their bodies. Because as with all bodies, these bodies were more than just “flesh” – these were and are sign systems and symbols that could effect and affect political life. So they had to be killed, or, at the very least subjected because what they were signalling or symbolizing was a direct threat to settlement. (2016, n.p.)

“This was achieved,” continues Simpson, “through the imposition of Federal and state law in particular legislative moments but also through slow processes of forced geographic removals, assimilation projects and citizenship itself. The move to patrilineal/patriarchal governance in Indian territories was a legal femicide of a

sort” (n.p). While Simpson focuses much of her attention on the Indian Act<sup>74</sup> and its legislation of Indigenous women in and out of existence, she is careful to note the wholesale effects such legislative processes had on Indigenous legal orders and political formations, such as the matrilineally-based Iroquois Confederacy. Where the role of Indigenous women in many Indigenous societies signaled and signals a vastly different political order to the legal, political, and institutional frameworks of settler colonialism, violence done to Indigenous women, both legislatively and physically—means which are intrinsically connected—has served as a primary mode of un-making Indigenous ways of life. Given the intrinsic and integral connection between Indigenous women and their waters, the targeting of Indigenous women through settler colonial legislation is one means through which Indigenous water worlds in particular have been radically constituted in the image of settler colonialism.

*Solar Storms* offers a narrative of what the re-making of Indigenous water worlds could actually entail: the centering of place-based relationality, the recognition of water’s integral role in cultural resurgence and political resistance, and the constitution of water as fostering and transmitting Indigenous law through kinship relations—all of which occur through the centering of Indigenous women and their integral role in re-building and sustaining Indigenous political orders. Where the development of the James Bay hydroelectric dam is part of the ongoing settler colonial nation building project, the resistance of the women in *Solar Storms* signals an alternative and much longer standing political order premised on relationships grounded in distinct territorial and ancestral

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<sup>74</sup> For discussion of the gendered legislative effects of the Indian Act, wherein Indigenous women who married non-Indigenous men lost Indian Status, along with any future generations, see Simpson (2016), “The State is a Man” and Lawrence (2004), “*Real*” *Indians and Others*.

knowledge, and the foregrounding of Indigenous women in Indigenous political, cultural and legal orders. Where water is the site of attempted environmental and cultural destruction, it is also the means through which these legal, cultural and political orders achieve articulation, as it connects the women to their histories, cultures, and other broader communities of resistance.

### **Complicated (Re)makings**

This chapter presents the question of where Indigenous rights might achieve meaning and power in relation to the ongoing encroachment of settler colonial development on Indigenous lands and waters. Where chapter two explored how this meaning becomes circumscribed and coopted through late liberal modes of governance, their subjectifications, and the politics of recognition that they perpetuate as a means to manage Indigenous resistance and perpetuate settler futurity, here I have sought to understand how different approaches to the remaking of Indigenous water worlds come up against and navigate state power in the modern era of Canada's Indigenous rights policies. In focusing on both Indigenous literary representation in Linda Hogan's *Solar Storms* and the political work and epic representation of the Grand Council of the Crees, these examples have shown that these remakings must occur not in isolation; rather, these examples illustrate that the remaking of Indigenous water worlds must occur through a complex relationality that recognizes both the necessity of negotiating the meaning of Indigenous rights at the state level, and especially in ways that challenge the state's ability to delimit the meaning of those rights, as well as through forms of resistance and

resurgence that foreground Indigenous kinship relations, the place-based epistemologies through which Indigenous conceptions of land, law, and cultural knowledge are derived. As Hogan has shown, this resistance and resurgence must also unfold in ways that situate Indigenous women as integral to Indigenous justice movements.

I do not intend to suggest that either the Grand Council of the Crees' political negotiations, nor Hogan's *Solar Storms* is a perfect example of how this relationality looks in relation to the remaking of Indigenous water worlds. Rather, taken together, these two examinations of a conflict over water and Indigenous rights more generally—one a fictionalized representation, and the other an epic documentation of the political events that shaped the response of the Grand Council of the Crees—work to make a link between the figurative and political practices entailed in the remaking of Indigenous water worlds within the context of the settler state. What the state circumscribes, literature helps to redeem and re-introduce, and what literature idealizes, the political praxis that state encroachment necessitates, works to protect and negotiate for the material conditions and rights protections that might otherwise be lost. This connection between praxis and figuration, or imagining of the space in which political action takes place, itself requires negotiation. The complex interactions between Hogan's figuration of resistance and the documentation of the Grand Council of the Crees epic narrative, along with the historical account of the work required to negotiate their way through various phases of a massive hydroelectric development, resists the simplification of Indigenous rights; the dialectical interaction between these modes of representation and engagement ensure that the legibility of Indigenous rights resides with the ways Indigenous peoples themselves articulate and negotiate their meanings within and between their own

communities and modes of engagement. The mediation between these distinct articulations and enactments of Indigenous rights take up the question of the conditions required for the remaking of Indigenous water worlds that Kelly's ironic representation of late liberal governance structures and subjectifications cannot. To be sure, the forced terms of negotiation perpetuated by the presumed jurisdictional powers of Quebec and the Canadian state entangle Indigenous rights within these powers and the politics of recognition that it mobilizes to delimit Indigenous rights; however, to presume that Indigenous peoples respond in any singular means to these encroachments is to itself delimit or circumscribe the legibility of the various means through which they engage, defend, and articulate the meaning of their rights.

What these two examples help to articulate, perhaps first and foremost, is that the Indigenous legal orders required for the protection of Indigenous water worlds are engaged, explored, and expressed through multiple modes and figurations. More importantly still, the examples also reveal the tensions and contradictions between these modes and figurations—how the complexity of kinship relations and the political agency of Indigenous women, the nuances of Indigenous hydrosocial relations, and the paradoxical work of water are often not accounted for in modes of engagement overdetermined by the settler state. The dialectical engagement between these two examples raise important questions about the legibility of Indigenous rights, and where and how these rights can be made legible as Indigenous law in the context of the settler state. For Hogan, water is both that which Indigenous law must protect, as well as the material that gives this law meaning. As Smith and Holland note, Hogan's representation of water in *Solar Storms* builds on the important “connections between literature and the

concrete realities of law and land” (57). The waters that flow out of James Bay and downstream, diverted and polluted by dam construction necessitate a relation between this figurative representation of Indigenous justice and the laws required to resist the material effects of settler colonial development. The necessary political work of the James Bay Cree exemplifies that Indigenous legal orders, for better or worse, must often be expressed and defended in complicated relationality to the settler state. Water, for both Hogan, and the ongoing political engagement of the Cree, is the means through which a relationality of law, imaginative figuration, and state engagement are made apparent.

Val Napoleon reminds us that “law is a process, not a thing” (3). Drawing on Lon L. Fuller, Napoleon also suggests that “law may be described as a “language of interaction”” (6). Borrows similarly writes, “The underpinnings of Indigenous law are entwined with the social, historical, political, biological, economic, and spiritual circumstances of each group”; he continues, “They are based on many sources, including sacred teachings, naturalistic observations, positivistic proclamations, deliberative practices, and local and national customs” (23-24). Given this diversity, Indigenous systems of water law must be understood to speak through various articulations of culture and politics, literary narrative, state engagement, and ongoing resistance—these are the various languages of interaction through which Indigenous legal orders are expressed and defended. The work of the Grand Council of the Crees and Hogan’s literary figurations of Indigenous social justice give voice to these multiple forms of articulation, along with the tensions and contradictions of their legibility under settler colonialism, aiding in the conceptualization of the Indigenous legal orders required to remake and protect Indigenous water worlds in the James Bay region.

In my concluding chapter, I turn to a final site of conflict along the Grand River in Southern Ontario. I have thus far examined the histories of the establishment of settler colonial water worlds on Indigenous lands, and the dominant registers of water that support these colonial incursions at the expense of Indigenous water worlds; I have considered how late liberal modes of governance and a Québécois postcolonial transferist narrative continue to manage and circumscribe the meaning of Indigenous resistance, rights, and law; and I have also examined how Indigenous peoples continue to constitute the meaning of their rights and the legal orders that support their modes of resistance and political engagement and which foster the conditions for the remaking and protections of their water worlds through multiple modes of expression and engagement, and even amidst a complicated relationality with the settler state. In this final chapter, I take this relationality to its limit and consider what an ethical framework for relational water worlds could actually look like. As I aim to make clear, and as the complicated and violent histories I have drawn on exemplify, this relationality is not one of idealized mutual respect, but one wherein settlers and the settler state must reckon with what must be given up, what laws must be acknowledged as holding jurisdictional power, and what it would mean to truly decolonize relationships over shared water sources.

**Conclusion: Co-Constituting Indigenous Water Worlds: Political Ontology,  
Decolonizing Hydrosocial Relations, and the Implementation of Indigenous Water  
Law**

Thus far, I have tracked the history of the dominant liberal ordering of Indigenous waters—the settler logics of possession and late liberal environmentalism that have worked to remake Indigenous water worlds in their image. My aim has been to trace the complex landscape of a dominant settler liberalism in Canada, and examine how it registers water predominantly and relationally through the purviews of private property, through its use as a utility, and as mean of ensuring settler futurity toward the perpetuation of the colonial project on Indigenous lands, often at the expense of Indigenous lifeways. These registers function as an extension of a settler liberal order that works to delimit the legibility of Indigenous water rights within the hydrological worldviews and material ordering practices of settler colonialism. These are the worldviews and organizing logics that construct settler water worlds on Turtle Island, as they threaten an actively unmake the water worlds of Indigenous peoples. I have explored these discursive and material constructions of water through interwoven narratives of early settler life-writing and the rhetoric of settlement, through settler environmental literary fiction and its ironic portrayal of late liberal settler subjectification, and through public policy and provincial and federal legislation, which reveals how possessive logics and liberal environmentalism exist on a continuum that has consistently worked to disavow Indigenous peoples' relations with, rights to, and self-determination over their waters.

Through Indigenous cultural production and case studies, I have also explored some of the logics and world views that structure Indigenous water worlds, which have been asserted in opposition to, and despite the imposition of settler colonial water worlds—Indigenous water worlds that have existed on Turtle Island since time immemorial and which both persist and are being remade in the wake of aggressive settler colonial hydrosocial relations, their corresponding laws, policies, and worldviews. I have examined Indigenous theories of place-thought and kinship, and analyzed different forms of Indigenous political resistance that offer alternative modes of engagement with watery landscapes and which articulate a different kind of relational approach between human and non-human environments. Rather than foreground the rights of the liberal individual to lands and waters, the organizing principles of Indigenous water worlds predominantly centre relations with these environments intersubjectively, in ways that are non-hierarchical, and which also, in many instances, foreground the integral role of Indigenous women as water protectors. In short, the examples of the organizing logics for Indigenous water worlds that I have drawn on emphasize relationships *with*, rather than rights *to* water.

As I have pointed to in my examination of the wild rice wars in the Trent Severn Waterway, the mercury poisoning of the English-Wabigoon River systems and the resistive practices of the Treaty 3 Anishinaabe, and the political action and figurative representation of the Cree and Inuit in responding to the James Bay Hydroelectric Project, Indigenous water worlds are premised on various and varied Indigenous legal orders which serve as guiding and binding structures for engagement between humans and the environment and which situate the legibility of Indigenous rights resolutely

within Indigenous assertions of law and sovereignty. Echoing my introduction, my consideration of Indigenous legal orders has followed Val Napoleon’s assertion that we “cannot assume that there are fully functioning Indigenous laws around us that will spring to life by mere recognition. Instead, what is required is rebuilding” (Napoleon 2013). While highlighting ‘fully functioning’ Indigenous laws was not the primary aim of my previous chapters—and indeed, in certain contexts, these laws are still being rebuilt, or require direct community engagement to express the depth of their meaning—in concluding my dissertation, I turn to a specific and longstanding legal formulation in the Two Row Wampum of the Haudenosaunee. The Two Row Wampum, also known as the Kaswentha/Guswentha, is an example of Haudenosaunee law and sovereignty, and helps me to explore what decolonial engagement over shared waters might look like when the legibility of Indigenous peoples’ inherent rights, and the legal orders and worldviews that structure them are reckoned with in waters that are necessarily shared.

What my sites of analysis have also illustrated is that Indigenous and settler water worlds are always already interconnected in many ways within the context of settler colonialism, its state powers, legal, political, educational, and cultural institutions, and the worldviews and discursive structures that it encompasses. Even as the settler state exerts its powers over Indigenous water ways, and even as Indigenous water worlds are remade and defended against settler colonial encroachment, waters flow between territories, disrupting stable notions of jurisdiction, and undermining any concrete worldings of the watery landscape. The sites of conflict that I have investigated reveal that water, for better and for worse, facilitates a relationality between settler and Indigenous water worlds and the competing hydrosocial relations that organize these

worlds. The tensions of this relationality between settler and Indigenous water worlds are perhaps most evident in demarcated land rights processes such as that of the James Bay Cree and the negotiation of the James Bay and Northern Quebec Agreement and subsequent agreements; the state's encroachment into Indigenous waterways imposes the demands of settler infrastructure and its relation to nation building onto Indigenous territories and ways of life that must then negotiate under the constraints of such impositions; however, water also forces a reckoning with Cree territorial sovereignty, its governance structures, and in Linda Hogan's fictive figuration of the conflict, with the kinship ties and gender-specific Indigenous hydrosocial relations that are often rendered illegible through state negotiations. Despite the often-competing conceptions of water and its use, and the conflicts that these disparate views give rise to, water is the means by which interconnection between settler and Indigenous worlds have been facilitated across Turtle Island. From the Trent-Severn watershed, to the James Bay Region, and the English-Wabigoon River system, to the rivers, lakes, and streams listed under the Navigable Waters Protection Act, water is a site of contest that reveals how its worlding always occurs relationally within, under, but also despite the conditions of the settler state.

In this concluding chapter, I move from analyzing the disparities between Indigenous and settler water worlds to considering the decolonial potential of their relational co-constitution. To be sure, and as I have expressed throughout, there are significant implications and limitations in seeking potential within that which is relational under the jurisdictional powers of the settler state. As I have shown, the material force of settler colonial hydrosocial relations have violently overdetermined the meaning of this

relationship. What I want to explore, then, is the potential for, and necessity of a co-constitution of settler and Indigenous water worlds that is decolonial and attentive to the ongoing relations facilitated by water's presence. Decolonial here does not mean merely recognition and respect of an ontological plurality on colonized lands; rather, drawing again from Tuck and Yang, my use of decolonial in relation to the co-constitutive force of water means "a change in the material conditions that undergird the settler state and their ongoing colonization of Indigenous people's lands, waters, and ways of life" (2012, 21). Given the history of settler colonial impositions on Indigenous waterways, this is a decolonial co-constitution that is premised on the centering of Indigenous legal orders and jurisdictional sovereignty, rather than subjugating them to crown sovereignty. At the heart of this chapter is the question of what it means to live relationally and ethically with water in the settler state and in ways that ultimately create the conditions for the decolonization of Indigenous water worlds.

### **Political Ontology and the Relational Worlding of Water**

This concluding chapter gestures toward the possibility of constituting settler and Indigenous water ontologies relationally in ways that are decolonial and that would help to foster the conditions for the remaking of Indigenous water worlds—which is to say the conditions for the assertion and resurgence of the Indigenous legal orders and hydrosocial relations, that give meaning to Indigenous peoples' inherent rights to and self-determination over their waters. Central to my exploration of the relational co-constitution of settler and Indigenous water worlds is the question of "what it would

mean to take seriously the possibility of multiple water ontologies, and what the implications of this would be for water governance in theory and practice” (Yates, Harris, and Wilson 2017, 798). In other words, if settler and Indigenous water worlds are necessarily constituted relationally by the waters that flow between them, how do we reckon with the force of Indigenous water ontologies and the laws that support them in ways that could create the conditions for the remaking of Indigenous water worlds in a settler state that has largely delimited their possibility? To be sure, the conditions required for the remaking of Indigenous water worlds necessitate also a remaking of settler colonial water worlds. As writers like Hogan, and the wild rice activism of the Ogimaa Mikana (Reclaiming/Renaming) project have illustrated, central to the endeavour of taking Indigenous water ontologies seriously in Canada is the need to undermine the ontological hegemony that structures the Canadian nation state’s engagement with Indigenous peoples, worldviews, and legal orders. The remaking of Indigenous water worlds is thus dialectical, demanding that the ontological hegemony undergirding settler hydrosocial relations is unsettled through the centering of Indigenous hydrosocial relations and their guiding theories, laws, and philosophies. In what follows, through a consideration of the concept of political ontology (and its corollary, “cosmopolitics”), put forth first by Isabelle Stengers (1997, 2005), and further elaborated on by Bruno Latour (2004) and Mario Blaser (2014, 2016), I examine what it could mean to rupture the settler colonial ontological hegemony over shared waters that flow between Indigenous and non-Indigenous communities. In turning to an Indigenous legal order in the *Two Row Wampum*, I conclude this dissertation by asking what it could mean to inhabit lands where multiple ontologies around water meet and interact in ways that do not undermine

the inherent rights and self-determination of Indigenous peoples—in ways that engage the legibility of Indigenous water rights and the legal orders and hydrosocial relations that organize them.

The notion of thinking about political interaction through the concept of a cosmopolitics stems from an opposition to the Kantian idea of cosmopolitanism, first put forward by Isabelle Stengers in 1997. In Kantian cosmopolitanism “a cosmopolitan is one who rejects parochial allegiances and embraces the common world (the cosmos) as the grounding to work out differences among humans” (Blaser 2016, 546). The cosmos is transcendent in Kant’s conception, and while it centres on discussion and debate, the different views that humans have about the cosmos, via culture and tradition, must ultimately be resolved toward a shared and universal conception of the common world—a shared ontology. Stenger’s concern with Kantian cosmopolitanism is that it presumes “an already unified cosmos” (Blaser 2016, 546). As I have shown, settler colonialism operates under the presumption of this unified cosmos, as it assumes and enacts a universal ontology; through processes of dispossession, containment, and management, settler colonial governance structures and logics of possession ensure the presumption of ontological supremacy. If worlds do interact in the settler colonial context, they are not to be treated as equal, or equally valid.

Latour, elaborating on Stengers notion of cosmopolitics, reminds us that humans do not enter conflicts about a common world merely with competing perspectives; rather, they go into political conflicts “along with the nonhuman things that make them act” (qtd. in Blaser 546). The ‘thing’ is not simply perceived differently, but may be understood and experienced as an altogether *different* ‘thing,’ given the relational context that people

or groups share with a given entity. People thus act in relation to the entity that has been constituted within a distinct ontology. Water, for example, as shown in previous chapters, is not only often perceived differently, but may be conceptualized as an entirely different entity between diverse groups of people: water or *Nibi* in the Anishinaabe context, for example, may be conceptualized as an ancestor or relation, an entity with agency that requires certain responsibilities; in the settler colonial context on the other hand, and as my examples have shown, water is dominantly registered as a resource and economic utility, or an extension of private property rights. While these different conceptions of water may “occupy the same space at the same time” to draw from Blaser (2018), they world the world in starkly different and materially significant ways. To suggest that these competing meanings may be commensurable within a shared cosmos—a common world, or shared ontological perspective—negates the vastly different ontologies that structure interactions with entities such as water and the ways that these interactions are implicated in processes of world making. As Blaser writes, “Stengers and Latour locate the problem with cosmopolitanism in its assumption of an already unified cosmos, a single world (the common “thing”), when we actually inhabit a pluriverse. Such a pluriverse requires a cosmopolitics” (546). Put another way, recognition of the idea that multiple ontologies exist in relation to each other—different ways of worlding a common space—demands a political engagement with the very notion of these ontological differences and their uneven relationships in a shared space.

Blaser has referred to the idea of a cosmopolitics in a slightly different, but no less instructive way through his concept of “political ontology.” Blaser writes, “political ontology cannot be concerned with a supposedly external and independent reality (to be

uncovered or depicted accurately); rather, it must concern itself with reality-making, including its own participation in reality-making. And this, of course, cannot be conceived as an autonomous move from how we engage the ways in which others make realities” (2014, 55). Political ontology is a useful concept for considering how settler and Indigenous water worlds may be better constituted alongside one another because it is not premised on resolution between competing and differently positioned ontologies, but on their necessary political interaction. Mobilizing the idea of political ontology is a means not of solving the problem of competing water worlds, but of better understanding the problem of their relation to one another, of their competition, and of their often-uneven positioning under over-determinate structures of power. As Blaser notes of political ontology, “the term is meant to simultaneously imply a certain political sensibility, a problem space, and a modality of analysis or critique” (55). He continues, “The political sensibility can be described as a commitment to the pluriverse – the partially connected unfolding of worlds – in the face of the and potentially by the project of a common world” (55). Blaser is careful to highlight that these worlds “are not sealed off from each other, with clear boundaries”; they are indeed connected, and “yet there is no overarching principle that can be deduced from these connections and that would make this multiplicity a universe” (55). Political ontology is thus premised on the notion that worlds may be at once distinct and relational; they unfold relationally through the shared connections to something like water, but the conditions of this connection are distinct; however, under the overdetermining logics of something like settler colonialism, these distinct connections are also often circumscribed within the ‘impoverishment implied by universalism’ and the presumed project of a common (settler colonial) world.

Emilie Cameron, Sarah de Leew, and Caroline Desiens emphasize the relational, yet conflictual connections between worlds, writing, “As Northern industrialization underscores, Indigenous and non-Indigenous territorial ontologies are not separate but coextensive – if frictional and still somewhat unbalanced – spaces, with the result that cultural and industrial activities necessarily overlap in the same geography” (2014, 24). Thus, while something like water flows between different worlds, it is the connection that is common, and not necessarily the ways that water is registered. As we have seen, the waters that flow in the Otonabee River, the English Wabigoon River systems, or the James Bay region, are understood in starkly different ways between the laws and policies of the Canadian state and Indigenous communities and nations. Water is both a site of different worlding practices, and an important site through which these differences exist in relation to one another; and while, as this project has shown, this relation is overdetermined by the logics of settler colonialism, the ongoing relationship itself is undeniable, and thus too is the persistence of Indigenous presence and worlding practices. Even as Canadian Indigenous rights discourse attempts to set the legibility of Indigenous rights within the presumed all-encompassing worlding practices of settler colonialism, Indigenous resistance, along with the worldviews, philosophies, political structures, and legal orders that organize Indigenous peoples’ relations to their lands and waters stand in stark opposition to a unified project of settler colonialism. Water ensures that these competing worlds, settler and Indigenous, are always in relation, and that ontological hegemony is always unsettled.

While Blaser’s notion of political ontology is useful for understanding water as an integral relational space that must be engaged toward the decolonizing of Indigenous

water worlds, as I will show below through my consideration of an artistic representation, mere recognition of this problem space is not enough to foster the material conditions for the remaking of Indigenous water worlds. In a 2018 reconsideration of the concept of cosmopolitics, Blaser is more attentive to the logics and impositions of colonialism within this problem space:

Through the practices that constitute it, coloniality produces a “zero point” of observation from which the colonizers cannot but see their own world constantly being reinforced as the only one. In effect, read through a colonial matrix that renders them erroneous and/or unreal, colonized worldings are amenable to translation and/or pedagogical coercion that effectively disappears or invisibilizes them as alternatives, while simultaneously rendering colonial categories commonsensical. (2018, 80)

Blaser’s concern for the translative and/or pedagogical coercion of world-making under the constraints of settler colonialism returns me to the question of Indigenous rights legibility in the context of the settler state. Where the political space of ontology illustrates the demand for a relationality between settler and Indigenous water worlds, the problem of legibility raises important questions about the decolonial potential of this space and how Indigenous legal orders, philosophies, and theories of interaction and responsibility can come to take precedence in this political interaction and relational space—how they can be read and given meaning and material force on their own terms.

To be sure, Western approaches to water which conceive of it largely as a utility, an extension of Western property rights, and as a means of progress and security for settlers and the settler state, does not offer a conceptualization that is about how to share, coexist, or how to live interdependently and relationally with water. This is an engagement with water that is about entitlement but not responsibility and which has actively rendered alternative approaches to negotiating the relational space of water as

*illegible*. The political space of ontology is thus the space where the inherent rights of Indigenous peoples must be made legible on their own terms, as these rights, and the legal orders and hydrosocial relations that organize them, are premised on water's relational capacity. To put this another way, settler colonial hydrosocial relations have predominantly foreclosed upon engagement with the political space of ontology, whereas Indigenous hydrosocial relations foreground the kinship ties, legal orders, and relationally responsibilities that open this space up. Co-constituting settler and Indigenous water worlds in ways that are decolonial and attentive to the ongoing relations facilitated by water's presence thus demands that settler water worlds reckon with, engage, and defer to the legibility of Indigenous water worlds, and the legal orders that organize them. This reckoning with the legibility of Indigenous rights means reading Indigenous legal orders, such as the Two Row Wampum, on their own terms, as the relational treaty it was always intended to be, and as that which asserts Haudenosaunee sovereignty over their waters and territories. As I will show below, it means unlearning and relearning, respecting boundaries and relationships, seeing the limits of one's own epistemology and ontology, and adopting a willingness to undermine ontological hegemony toward a shared relation with the common space and relational space of water.

My dissertation concludes, then, by gesturing to the possible ways in which Indigenous water worlds might be remade and defended in relation to, and in ways that are not overdetermined by the settler state through considering the problem space of political ontology and the legibility of Indigenous rights within this space—how Indigenous water ontologies and the legal orders that support them can come to bear on settler colonial hydrosocial relations and what kind of decolonial hydrosocial relations

could come about as a result. I engage this question first through a representation of the problem space of political ontology in Mohawk artist Alan Michelson's video art installation *TwoRow II*, in which Michelson represents the conflicting space of a shared river between the Haudenosaunee and surrounding non-Indigenous communities along the Grand River in Southern Ontario. Michelson's work allows me to think through the decolonial limits and potential of considering water as a problem space of political ontology as it flows between Indigenous and non-Indigenous communities. I view his artistic representation as offering a vision of the challenges and imperfections of a decolonial future, and of the space that must be engaged in order to decolonize settler and Indigenous relations over a shared body of water. Michelson's installation gestures to the common requirements for a decolonial-relational cosmopolitics, and through his emphasis on the Two Row Wampum, I argue, invokes consideration of what must be given up, what powers must be shifted, and how Indigenous law must be given precedence over shared waters in order for this decolonial relation to occur.

This notion of what must be given up—of a shift in jurisdictional power, that Pasternak reminds us is about the “inauguration of law—or the authority to have authority—and the specific forms of struggle that arise when competing forms of law are asserted over a common space” (2014, 146)—brings me to my second site of analysis of this chapter. While Michelson's piece helps me examine the potential relationality of settler and Indigenous water worlds, as my sites of conflict have sometimes shown, Indigenous peoples are all too aware that that which is relational most often does not mean equal or equitable. Where the emergence of the Grand Council of the Crees, discussed in chapter three, represents a kind of relationality between Indigenous peoples

and the settler state—one wherein the emergence of a necessary Indigenous political form occurs within and because of the confines of state imposition onto Indigenous lands and waters—many Indigenous scholars, writers, and activists, Linda Hogan included, will point to the limitations of this kind of recognition-based relationality. What did the Cree give up through the signing of the James Bay and Northern Quebec Agreement? What was lost in relation to a distinctly Cree legal and political order with the formation of the Grand Council of the Crees? While much was gained, and while I do not intend to undermine the often-necessary political responses that emerge out of mass-scale development projects on Indigenous lands, there is no doubt that this is a relationality wherein Indigenous peoples' worldviews are circumscribed in many ways by settler colonialism and its logics of development, capital accumulation, and conceptualization of water first and foremost as a utility for nation building.

Given the history of the circumscription of Indigenous water worlds under the imposition of settler colonialism, what would it mean then, to posit a different relationality around water—a material that is unquestionably relational—that instead circumscribes settler worldviews in relation to their Indigenous counterparts? What would it mean for settlers to be the ones giving something up in order to constitute a relational cosmopolitics—to engage with the problem space of political ontology in ways that are decolonial and which foster the conditions for the proliferation of Indigenous water worlds? How might this be done? What might it look like? In the final section of this chapter, and of this dissertation, I return to the space of Indigenous law as I examine how the Two Row Wampum, as both an assertion of Haudenosaunee law and sovereignty over their territory, as well as a treaty that acknowledges the necessary relational space of

water, the kinship ties, and relational philosophies, has to the potential to set the terms of engagement for the settler colonial water ontologies that have come to organize relations in this region.

### **Alan Michelson's *TwoRow II*, the Two Row Wampum, and the Decolonial Potential of the Problem Space of a Shared River**

Mohawk artist Alan Michelson's *TwoRow II* provides a conceptual framework through which to explore how oft-competing hydrosocial relations, and the ontologies from which they emerge, interact along a shared body of water in Southern Ontario (Figure 2). While in-depth analysis of the many diverse articulations of the hydrosocial in this region is beyond the scope of this chapter, Michelson's video art installation helps to visualize the relationship between the differing social relations to the river of the differently positioned communities—one Indigenous and the others largely non-Indigenous. While *TwoRow II* predominantly offers a depiction of the ongoing juxtaposition of social relations to the river, the differing interpretations and their often-competing interactions, the presentation of this relationality under the superimposition of the Two Row Wampum gestures toward a vision of the potential for a decolonial future, and of the space that must be engaged in order to decolonize settler and Indigenous relations over a shared body of water. Michelson's *TwoRow II*, I argue, thus gestures to the requirements for the decolonization of these relations as the relationality it addresses and the piece's emphasis on the Two Row Wampum, ultimately offers a framework

wherein Indigenous law must be centered as the mediating factor between Indigenous and non-Indigenous hydrosocial relations.

In Michelson's 2005 video art installation, housed in the National Gallery of Canada and shown at Sakahàn International Indigenous Arts in 2013, the two banks of the Grand River move horizontally across a screen in monumental panorama, superimposed by an image of the Two Row Wampum. On the bottom half of the screen, and consequently, within one of the purple rows of the wampum, moves the bank of Haudenosaunee territory on the Six Nations of the Grand River Reserve. On the other half of the screen, and within the wampum's parallel purple row, the riverbank bordering the non-Indigenous townships of Ontario—Caledonia, Middleport, Brantford—moves slowly across the top of the screen. The two moving riverbanks and their corresponding purple rows are separated by white space, completing the image of the wampum belt. The video is further accompanied by two audio tracks played over top one another. One track plays a Canadian dinner boat cruise captain's "official" tourist narrative of the local European history of the Grand River and surrounding areas, while the other track plays Elders from the Six Nations community speaking about what the river has meant to them. As the tracks play simultaneously, the viewer must struggle to listen for a coherent narrative, reckoning with whose voice ought to be distinguished over the other. The experience can be a disorienting negotiation between the two competing narratives. While listeners may be able to draw their attention to one narrative over the other at various points, I assert that it is the competition and relation between them that is most integral to Michelson's piece. The aim of his work is not necessarily for audiences to interpret the meaning of or decipher each audio track, but to experience the complicated

relationality that they portray. Michelson's *TwoRow II* thus reaches toward a consideration of decolonial living-in-relation in the region while highlighting the interactions that structure and complicate these relations.

Michelson's installation draws out this relationality in the region—the competing and differently positioned worlding practices of the communities—by signaling a juxtaposition of meaning on multiple fronts. We see the two different physical banks of the river, notably moving across the screen in opposite directions, visualizing their incongruency. We are presented with contrasting oral narratives, often speaking at cross-purposes, each one drowning out the other at various points. The tourist narrative, for example, describes settler presence and interaction on the river, while the narrative's presence itself highlights the imposition of settler colonial hydrosocial relations that treat the river predominantly as a site of recreation, and of tourism. The dinner boat cruise captain describes aspects of the Six Nations reserve as part of his tourist presentation, incorporating the Haudenosaunee into the settler colonial narrative, in a banal and apolitical manner. Narration from Haudenosaunee Elders, on the other hand, can be heard at one point to highlight the tensions over their Longhouse tradition in the region, those which would eventually see the Haudenosaunee moved away from the town of Middleport and onto reserve lands on the other side of the river. These juxtapositions of meaning, history, and relations to the river persist throughout the audio tracks. One voice, and thus one historical interpretation may be more audible at times, making the other difficult to distinguish, emphasizing both the significance and challenges of simultaneous transmission and projection. Indeed, while one voice may take dominance, the other does not merely disappear. Further, in Michelson's words, we also witness “a mash up

between two very different cultural traditions” through the combination of the Six Nations’ traditional wampum belt and the form of the panorama, often associated with early European landscape tourism art (Michelson, 2011). The viewer of the installation is encouraged to follow the path of the river as it implicitly cuts through the two banks, negotiating between the tensions of the very different representations and interpretations. One might ask, which interpretation and whose voice takes precedence? Which history of the river is primary? Are the speakers even cognizant of one another and their distinct cultural perspectives? At the heart of Michelson’s piece is the juxtaposition of disparate, often oppositional interpretations of the river’s significance. And yet, the river serves as the unifying element in *TwoRow II*, tying both the work, and the communities—settler and Indigenous—together. While the two banks of the river may appear, or be heard to drown each other out at various points, and while interpretations of the river’s significance may be worlded differently by either side, the flow of the river remains constant between them, ensuring that their relation to the river, and to each other, remains dialectical—a problem space of politics, history, and ontology.

I contend that Michelson’s *TwoRow II* reveals the requirements for a decolonized engagement between two distinct cultures and their relationships to a shared body of water. His piece forces the question as to what sort of ethical, political, and decolonial encounters might be possible through this shared water as it cuts across territories that have been historically and contemporarily contested.<sup>75</sup> Michelson’s piece raises the

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<sup>75</sup> Between 1980 and 1995, the Haudenosaunne of the Grand River filed 29 land claims against the Crown based on Canada’s Specific Claim’s policy. Perhaps most notable was the 2006 reclamation of Kanonhstaton (meaning the Protected Place) by members of the Six Nations community. The land in question had been slated for a housing development site despite being part of an ongoing land claim. This particular claim dated back to a nefarious land ‘surrender’ in 1841, with many of the Haudenosaunee’s claims to land stretching as far back as early settlement of the territory along the Grand River. For more information see Susan M. Hill 2009, 2017, Laura DeVries 2011, and Rick Monture, 2015.

question of what the river does that its banks cannot? What does water tell us about competing ontologies in a shared region? In Jessica Hallenbeck's article on the Two Row Wampum Renewal Campaign—a Haudenosaunee campaign to renew and honour the significance of the Two Row Wampum—she suggests that “Centering water opens up space for political and relational attention toward the bodies, beings, stories, and histories that run through it” (2015, 353). Similarly, in a recent guest editorial of the journal *Society and Natural Resources*, focused on thinking relationships through water, Franz Krause and Veronica Strang write, “water inspires novel ways of thinking about key aspects of social relations, including exchange, circulation, power, community, and knowledge” (2016, 633). The social relations to the Grand River vary widely, but are also put in relation by the river itself. The river serves as a kind of problem space of competing relations in this way. Michelson's piece emphasizes this relationality, while also illustrating the apparent incommensurability of social relations across the river—the voices speak over, not to one another, and they articulate very different perspectives. Implicit in his piece, represented at various points through the competing audio tracks, through the imposition of a dominant tourist narrative, and the narratives of Haudenosaunee Elders that interrupt or compete with that narrative, are the power differentials, the community perspectives, and systems of knowledge that shape how the river is engaged and understood. His project, however, does not go as far as articulating in explicit terms the specificity of the social relations that are being expressed, nor does it make explicit the reasons for their incommensurability. To be sure, the audience of Michelson's work can garner insights into the differing and complex hydrosocial relations of the Grand River, which diverge and interact, as the river may signal

settlement, progress, industry, tourism, or property for one community, or a meeting place, a travel route, or a site of spirituality and cultural renewal for another; indeed, while Michelson's audience may be able to discern some clear disparities between the competing narratives, arguably it is the competition, rather than the narratives themselves that is foregrounded.

The competition highlighted in Michelson's work risks a suggestion of a kind of equal positioning of social relations along the river; however, Michelson's foregrounding of the Two Row Wampum, both through the work's title, and as the undeniable lens through which the work is to be viewed, pushes consideration of the relations he highlights toward that which must be grounded in the histories, power structures, and exchanges between the communities along the river's banks. His piece reveals the problem space of political ontology that must be further addressed in order to engage the relationships along this shared river in meaningful and decolonial ways; but the Two Row Wampum, serving as that which holds the work together, I argue, makes a claim to exactly how this space is to be mediated. Michelson's foregrounding of the Wampum ensures that the ethical and decolonial potential that might be opened up in thinking about social relations through the river is also understood as a deeply contested political space. While the emphasis on the Two Row Wampum foregrounds Haudenosaunee presence on the river, the audio being delivered from a tour boat cruise, and the dialogue that describes the settler presence in this region, reminds viewers and listeners that it is also in many ways, a settler colonial space. Michelson's piece thus prompts me to not just consider the river as a problem space of political ontology, but also how it came to be framed in this way—what powers have created the conditions for the contested meanings

that exist in the region? How have they made the Haudenosaunee narratives of the river illegible? And why must we turn our attention back to the Two Row Wampum that frames Michelson's installation? Ultimately, through consideration of these often-contested relations, I contend that *TwoRow II* presents the impetus for a decolonial relation to the Grand River that must be mediated through the Indigenous legal orders that were intended to organize relations to these shared waters. Below, I consider both the settler colonial spatiality that has come to define relations to the river, as well as the resurgent Haudenosaunee legal assertions via the law of the Two Row Wampum and its diplomatic requirements, which must take precedence in order for these relations to be decolonized.

#### *The Imposition of Settler-Colonial Hydrosocial Relation in Grand River Territory*

The Grand River has been largely shaped under settler colonial social relations that treat water as an abstract resource to be managed and more often, mismanaged. This is an overdetermined settler colonial hydrosocial relation which centres on rights to, rather than relationships with water. As Hallenbeck notes, "Settler colonialism's spatial reconfigurations is . . . deeply connected with the reterritorialization of waters, bodies, and beings" (353). With the dense population of southern Ontario, the Grand River is both an immensely important, and exceptionally precarious watershed that has been reterritorialized to bolster settler progress. The history of the Grand River is one of both settler colonialism, and resistant assertions of Haudenosaunee sovereignty. Initially granted to the Haudenosaunee for their support of the British during the Revolutionary War, and the subsequent loss of their homelands in the Mohawk Valley south of the

newly demarcated and defended United States border, territory along the Grand River was set aside for displaced Haudenosaunee through the 1784 Haldimand Deed (Hill 2017; Monture 2014). On October 25<sup>th</sup>, 1784, Frederick Haldimand declared:

I do hereby in His Majesty's name authorize and permit the said Mohawk Nation and such other of the Six Nations Indians as wish to settle in that Quarter to take Possession of, & Settle upon the banks of the River commonly called Ours [Ouse] or Grand River, running into Lake Erie, allotting to them for the purpose Six Miles Deep from each Side of the River beginning at Lake Erie, & extending in that Proportion to the Head of the said River, which then & their Posterity are to enjoy for ever. (Qtd. In Hill 2017, 146)

Despite Haldimand's stated commitments, Haudenosaunee title to this territory remained contentious, and, given its increasing value to Upper Canada, was almost immediately cut by one third of the initially promised lands by lieutenant governor of Upper Canada, John Graves Simcoe, who also limited the Haudenosaunee's ability to administer their own lands along the Grand. Claim to the headwaters of the Grand River, as promised under the Haldimand Proclamation, was consistently denied by Simcoe and title was eventually handed over to squatting settlers (Hill 2017). While land leases continued to be administered to white settlers by the Haudenosaunee Confederacy in order to support the establishment of their new home along the Grand, these grants were often violated or illegally sold by those leasing the land. Illegally squatting settlers became a persistent and increasing problem. No longer requiring the military support of the Haudenosaunee, the imperial government's response to this issue was to encourage Six Nations to cede their land to the Crown directly, so that they would receive some financial compensation, rather than simply losing it to the illegal squatters (DeVries, 2011; Hill, 2017; Monture, 2014).<sup>76</sup>

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<sup>76</sup> In her 1998 article, "'A Condescension Lost on Those People': The Six Nations' Grand River Lands, 1784-1860," Sideny Haring highlights how Joseph Brant, a complicated and important figure in

Perhaps most egregious, and directly related to the waters of the river itself, was the investment of Six Nations trust funds in the Grand River Navigation Company by superintendent general of Indian Affairs, Samuel P. Jarvis, without the consent of the Six Nations Trustees or the Confederacy Council (Hill, 178). With the construction of the Welland Canal underway in the 1820s, the Superintendent Jarvis, used hundreds of thousands of dollars of Haudenosaunee monies held in trust to purchase stocks in the Grand River Navigation Company, which itself claimed Six Nations lands for canal construction, as it dammed and flooded Six Nations' territories. The company used stone and timber from Haudenosaunee lands in order to aid in "river improvement," and the flooded lands, while leading to significant financial losses for Six Nations, also had serious health impacts (Hill 179-179). In an 1838 report of the New England Company<sup>9</sup>, it was noted that, "The number of Indian inhabitants on the lower Part of the Grand River have considerably decreased, owing to the Dams across the Grand River, for the Purpose of improving the Navigation, having Flooded to a considerable extent the bordering Lands, and introduced Agues and Fevers into Situations formerly healthy" (qtd. In Hill 179). As Susan M. Hill notes in her book *The Clay We are Made Of: Haudenosaunee Land Tenure on the Grand River*, "Earlier flooding had also had similar negative health impacts, but this time the Six Nations were actually paying for their lands to be flooded, their health to be compromised, and their natural resources to be taken" (179). The

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Haudenosaunee history, also encouraged the Haudenosaunee to sell some of their lands as an important assertion of sovereignty, and to increase Six Nations' prosperity along the Grand. While other leaders at Six Nations disagreed, the disparity in views over how to manage lands in relation to the settler state was further taken advantage of by squatting settlers. Brant's perspective on Haudenosaunee land tenure is an important reminder that even within the Haudenosaunee themselves, there exists competing and complicated perspective on the meaning of land and sovereignty. (see Harring 37-41 for further discussion on Brant's perspective of Haudenosaunee land tenure)

ventures of the navigation company eventually failed, and Six Nations have consistently appealed to every level of government to have their misappropriated trust funds returned, without securing any redress.

Settler colonial encroachments onto Haudenosaunee lands continued into the latter half of the 19<sup>th</sup> and 20<sup>th</sup> century. From an 1841 nefarious land surrender (Hill 2017, 180-182),<sup>77</sup> to the forceful instalment of the band council system in 1924 (quite literally at gunpoint by the RCMP) (Monture 2014, 116-117),<sup>78</sup> to involuntary enfranchisement, assimilation policies, and residential schools, up to the 2006 land dispute over a housing development between Six Nations and the town of Caledonia (a direct result of the 1841 surrender) (See Hill 2017). In other words, the Haudenosaunee's life along the Grand River has been constantly demarcated by the settler colonial logics of possession that shape the river and the social relations around it.

Initially considered a site of colonial development and seeming prosperity, in 1937, *MacLean's* magazine described the River as an "open sewer" (qtd. in MacGregor 2015). A 2015 article in the *Globe and Mail* charts the Grand River's return to its quote

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<sup>77</sup> In 1841, Samuel P. Jarvis, on behalf of the imperial government convinced seven chiefs to sign a land "surrender" without the authority of the Confederacy Council. Susan Hill notes how, "the government had created this scheme as a means of covering their own errors regarding Six Nations land" and to assure white settlers that they could obtain title to the lands that had been squatting on (181). The "surrender" was almost immediately contested by Six Nations' Confederacy Council and remains at the root of a number of important land disputes ongoing in the region to this day. For more information, see Hill 2017.

<sup>78</sup> Rick Monture explains how in 1923, a detachment of the RCMP was permanently stationed at Oshwekan in Six Nations, "presumably as a means to restore order on the reserve" following a shooting incident over illegal liquor sales between police and reserve residents (2014, 116). Monture writes, "An already angry Confederacy [Council] saw this as further evidence of Canada's intent to force their government, and community, into submission to Canadian rule" (116). In response, Chief Deskaheh travelled to Europe to present the League of Nations with a pamphlet entitled, "The Redman's Appeal for Justice," which outlined "the historical basis of the Six Nation's claims" and which urged the league to support Haudenosaunee rights along the Grand River (117). In apparent response to the embarrassment and anger this caused then Minister of Indian Affairs, Duncan Campbell Scott, approximately twenty armed RCMP officers were ordered to officially remove the traditional Chiefs from the Council House at Six Nations, and replace them with an elected-band-council system as set out in the Indian Act (117) For more information, see Monture 2014.

un-quote “former greatness,” noting that “Modern waste-treatment facilities, better farming practices and changing industrial realities have all had beneficial effects” (MacGregor 2015). But of course these effects are uneven. The Grand River and its tributaries are surrounded by roughly a million people. It is the drinking water source for only 28% of those people. For the Haudenosaunee of Six Nations, in ideal conditions, the Grand River is intended to be the primary drinking water source for their entire community. Most of the surrounding non-indigenous communities are connected to the treatment plants of larger neighbouring municipalities (Dyck et al., 2015; McClearn, 2017). Thus the health of the drinking water for the peoples of Six Nations is disproportionately affected by those many communities who use the river for recreational or industrial purposes, but not for drinking. Despite construction of a state-of-the-art water treatment plant in 2014, many residents remain unconnected due to a lack of basic infrastructure. The community continues to face contamination of its source water through poor residential wells, disposal facilities, septic systems and agricultural sources, with many residents collecting clean water from a common community well, similar to what might be found in small villages of the developing world (Dyck et al., 2015; McClearn, 2017).<sup>79</sup>

Through settler encroachment and the limiting of Haudenosaunee tenure over their lands along the river, social relations to the river have been overdetermined through the

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<sup>79</sup> Haudenosaunee scholar and resident of Six Nations, Dawn Martin-Hill, is currently leading an almost 1 million dollar research project to assess community water quality issues at Six Nations of the Grand River in Ontario and the Lubicon Cree Nation of Little Buffalo in Alberta. The results of this research will be integral for understanding the depth of the health impacts of lack of access to clean drinking water in these two communities. For more information see: <http://www.cbc.ca/radio/outintheopen/neighbours-1.4618733/why-so-few-people-on-six-nations-reserve-have-clean-running-water-unlike-their-neighbours-1.4618968>.

register of private property; with the damming of the water and destruction caused by a failed navigation company, the river was registered through its value as a settler utility; and with the consistent settlement of Haudenosaunee lands, and the persistent neglect of the waterway sustaining this settlement, the river has also become a means of ensuring a settler futurity in the region that negated the experience of the Haudenosaunee and their relation to its waters. These settler colonial registers of water, the dominant means through which settler colonial hydrosocial relations come to materially organize the space of the river, worked to dispossess the Haudenosaunee of their territories, while actively unworlding Haudenosaunee relationships to the shared waters. Michelson, through his use of the narrative of a dinner boat cruise captain, further shows how these histories of dispossession have become obfuscated by dominant settler colonial hydrosocial relations, and the commonsensical, apolitical narratives of settlement, tourism, and recreation. These compounding issues illustrate both what the Haudenosaunee have been up against under the conditions of settler colonialism along the Grand River, as well as the imperative to assert the significance of, defend, and remake their hydrosocial relations within this contested territory.

*Haudenosaunee Hydrosocial Relations and the Two Row Wampum as Haudenosaunee Water Law*

As Michelson's competing voices illustrate and prompt viewers to consider, these settler colonial interactions are not the only relationships to the river that continue to exist in Grand River territory. Going back much further, the Haudenosaunee possessed a much different relationship to the lands they inhabited, which was culturally and politically

grounded, and was brought with them to Grand River territory when they settled along its banks. While I cannot, nor is it my aim to, offer a comprehensive explanation of Haudenosaunee land and water tenure, I draw on the extensive research of Susan Hill and Rick Monture, among others, to offer some insights in relation to how Haudenosaunee knowledge systems and histories—distinct ontological perspectives—shaped their social relations and laws to the territories they inhabited. As Monture highlights in his text, *We Share Our Matters: Two Centuries of Writing and Resistance at Six Nations of the Grand River*, the ideological, philosophical, and legal foundations of the Haudenosaunee as that which honour and is connected to the natural world is grounded in the Creation story of Sky Woman, reinforced through ceremonies “that were given to the Haudenosaunee from the very earliest of times,” supported through the Great Law, which brought the five warring nations together (the Tuscarora were later adopted as the sixth), structured by the Code of Handsome Lake, which is often referred to as “the modern longhouse religion,” and carried forth into political interactions through the philosophical foundations of the Two Row Wampum and the Silver Covenant Chain (2014, 3-13). Former Director of the Haudenosaunee Environmental Task Force, James Ransom, and settler anthropologist Kreg Ettenger elaborate on the philosophy that underpins the laws and practices of the Haudenosaunee Confederacy:

Even within those Nations with elected tribal governments [and band councils], there are strong traditional factions which continue to support the laws and practices of the Haudenosaunee Confederacy, including the Great Law of Peace. It is this aspect of contemporary Haudenosaunee society which leads such communities to search for models of interaction which reflect traditional ideals and values, including such concepts as peace, harmony, and mutual respect. These are the concepts on which the Haudenosaunee Confederacy was founded, and which have guided it through the ages in its relationships with other nations, both Native and non-Native. (2001, 221)

Susan Hill offers another organizing principle of Haudenosaunee worldviews through the concept of “Yesthi’nihstenha Onhwentsya,” meaning “Land as Mother,” which emphasizes “continually recognizing our responsibility to and dependence upon the land” (5). Drawing from the extensive written and oral records of the Haudenosaunee Confederacy Council, Hill elaborates, explaining how, “the Grand River Haudenosaunee used their traditional teachings to develop land tenure policies in the face of their interactions with European peoples. The policies they created flowed out of the beliefs that land was intended to provide for the people, as a mother does for her child” (4). Examining the roots of Haudenosaunee land tenure in Grand River territory, Hill asks how it is “we get from Yethi’nihstenha Onhwentsya—that is, continually recognizing our responsibility to and dependence upon the land—to “Land for Sale?” (5). Like Michelson, Hill is interested in how political and social relationships to land and water interact and affect one another in territory that is, for better or worse, shared amongst communities with differing and often competing perspectives.

These stories, philosophies, ceremonies, and political and legal structures represent a Haudenosaunee worldview deeply connected to the “collective experience of [their] ancestors” (Hill 2017, 1). While I will expand on the significance of the Two Row Wampum below, Haudenosaunee worldviews that stem from their understanding and retelling of the Great Law and Code of Handsome Lake, for example, represent perspectives grounded in culture and ontological experience that I simply do not have access to as a non-Haudenosaunee person. As Monture notes, language plays a significant role in expressing and understanding the worldviews present in these Haudenosaunee stories and ceremonies. He writes, “I have often been told by fluent Haudenosaunee

speakers that many of the concepts that are used when we talk about the Great Law [or] the Code of Handsome Lake . . . for example, are imperfect translations of what these philosophies “really mean” in our languages” (23). With this in mind, Monture is also careful to highlight the significance and “long tradition of articulating Haudenosaunee concepts in a language that is accessible to settler society in the hopes that awareness and understanding can be reached” (24). Even as Haudenosaunee ontology is rooted in the language and distinct histories of Haudenosaunee peoples, there are concepts and expressions of Haudenosaunee land tenure that have been clearly expressed and also developed in response to interactions with European settlers, and the ensuing Canadian state. Monture’s expression of the tension between worldviews that are grounded in language and concepts that may be untranslatable and the value and significance of translation across cultures highlights an important engagement with the problem space of ontology and the question of rights legibility across Indigenous and non-Indigenous societies. His commitments to the world-making practices of the Haudenosaunee emphasize the distinct Indigenous ontologies necessary to the organization of Haudenosaunee land and water tenure in their territory, while his acknowledgement of the tradition of translating Haudenosaunee concepts into terms that might help achieve understanding between Haudenosaunee and settler societies speaks to a recognition of the ways in which settler and Haudenosaunee worlds exist in relation to one another. Monture echoes what Ransom and Ettenger call “a dual emphasis” in Haudenosaunee worldviews, with “Haudenosaunee sovereignty and identity concerns balanced by a willingness to cooperate with outside communities and governments to solve common problems” (223).

As Michelson's superimposition of the Two Row Wampum onto his video installation prompts me to consider, as Haudenosaunee law, the Two Row Wampum serves as an integral articulation of this relational philosophy that expresses the significance of Haudenosaunee land and water tenure in their territories, while also extending to the diplomatic requirements for navigating hydrosocial relations in the shared space of the Grand River region. Michelson's incorporation of this foundational treaty in his piece is instructive. Through the competitive narratives he highlights, the juxtaposition of meaning he draws our attention to, and most importantly, through its incorporation of the Two Row Wampum, his piece invokes the necessity of grappling with interconnection along the Grand River in ways that ultimately defer to Haudenosaunee law. The Two Row Wampum, also known as the Kaswentha or Guswentha, is one of the oldest intended treaty relationships between Indigenous peoples and European settlers. Presented first by the Haudenosaunee to the Dutch in 1613, in what is now upstate New York, it was carried forward to ensuing groups of settlers, serving as an important symbol of Haudenosaunee sovereignty both in the North-East United States, and along the Grand River in Southern Ontario (Turner 2006). The two parallel rows of purple beads represent the Haudenosaunee and European political authorities respectively, separated by three rows of white beads symbolizing peace, respect, and friendship (Turner 2006, 48).<sup>80</sup> As Dale Turner notes,

These principles make sense of the relationship between the two purple rows: the two participants in the political relationship—Europeans and Iroquois—can share

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<sup>80</sup> While the meaning of the three white rows of the Two Row Wampum varies slightly between texts, Turner's sentiments capture their general interpretation. I am only scratching the surface of the significance of the Two Row Wampum in this short article, and as a settler scholar who grew up in the territories governed by this important treaty, I am continuing to learn about its meaning and significance. The work of Two Row Wampum historian, Rick Hill offers important insights into the meaning of the treaty. See for example "Talking Points on History and Meaning of the Two Row Wampum Belt" (2013): <http://honorthetworow.org/wp-content/uploads/2013/03/TwoRowTalkingPoints-Rick-Hill.pdf>.

the same space and travel into the future, yet neither can steer the other's vessel. Because they share the same space, they are inextricably entwined in a relationship of interdependence—but *they remain distinct political entities*. (54, emphasis in original)

Emphasizing the significance of water in the treaty, Hill similarly states, “Within the oral record of the Haudenosaunee, it is noted that the relationship was to be as two vessels travelling down a river – the river of life – side by side, never crossing paths, never interfering in the other's internal matters. . . . In essence, they agreed to live as peaceful neighbours in a relationship of friendship” (2008, 30-31). Drawing out the Kaswentha's significance in solving contemporary environmental problems, Ransom and Ettenger further suggest that the treaty “calls for cooperation to serve common interests even as it recognizes the vast differences between the two parties in the treaty, and their inherent right to sovereignty in their own affairs” (222); they continue, “This reflects the fundamental concept of the Kaswentha — the ability to preserve one's identity and autonomy while working with allies in response to common interests” (223).

The water—the white background of the wampum belt—is the facilitator of this relationship. Water is the constant presence of that which is shared, and which necessitates attention to relationships within this shared space. The water, in many respects, may be understood as that which holds the treaty together. As Eva Mackey notes, “The Two Row Wampum is often interpreted in terms of the autonomy and *separation* of the two separate rows, vessels, or nations. . . . However, nuanced analysis undertaken by a number of Indigenous scholars provides a provocative interpretation based on a slight yet significant shift of focus: they theorize the significance of the *shared* river, of the path *between* the rows” (2016, 135). Drawing on Indigenous scholars, Susan Hill, Leroy Little Bear, and Dale Turner, Mackey emphasizes the white space of the

treaty, writing, “The Guswentha, guided by the Great Law of Peace, embodies a set of powerful embedded principles of behaviour: respect, reciprocity and renewal. These principles are central to understanding Haudenosaunee political thinking about how to maintain political relationships in practice” (136). Mackey continues,

The Guswentha model allows for simultaneous distinction and interdependence . . . It idealizes neither separation nor sameness . . . This kind of relationship is not a matter of having power over one another, but of negotiating both autonomy *and* relationships simultaneously. These are not dualistic relationships based on subordination *or* equality, superiority *or* inferiority, freedom *or* slavery, or autonomy *versus* interconnection. Instead, the two-row wampum represents a more complex negotiation around autonomy *and* interdependence. (137, emphasis in original)

As Mackey draws out here, and as Michelson’s *TwoRow II* invokes through its portrayal of competing voices speaking across the river and within the white space of the wampum, the Guswentha highlights the necessity of and sets the terms for a committed political relationship to the waters that necessarily flow between the Indigenous and non-Indigenous communities. The shared water, as viewed through a Haudenosaunee ontology, demands good diplomatic relations between settler and Indigenous peoples in a shared space. Haudenosaunee law, through the Two Row Wampum, and the relationality and autonomy expressed by its white rows, depicts the rules, the terms of engagement, and ultimately, the legal orders that must structure relations to the waters in ways that are interdependent without subjugation.

*TwoRow II*, and the Two Row Wampum specifically, then, articulate a relationship between communities premised on the waters that flow between them, and also on a particular worldview for how that water must be shared and engaged relationally. The diplomatic relations expressed by the Two Row Wampum are a long ways off from the relations of private property, production, and the logics of possession and subjugation that

undergird settler colonial hydrosocial relations. Where settler colonial relations to these shared waters have come to overdetermine both the expression of Haudenosaunee relations to the river, and in ways that threaten the health of the shared mediating space between communities, the Two Row Wampum stands as the necessary assertion of Haudenosaunee law and sovereignty that brings attention back to the problem space of ontology that is the Grand River and the requirements for decolonizing this problem space. Michelson's piece, helps to depict the complexity of this problem space through its competing audio tracks, the differing voices, and the different histories and hydrosocial relations these voices bring to a shared space, through its incongruent river banks that move in opposite directions, and ultimately, through its foregrounding of the Two Row Wampum, which sparks consideration of the requirements for a rethinking of hydrosocial relations in the region—for the lens and law that these hydrosocial relations must be viewed through. While Michelson's piece largely depicts the challenges and considerations of a decolonial future, it moves us toward the Indigenous legal orders that emphasize relational autonomy, and which foreground the shared space of the waters that flow between Indigenous and non-Indigenous communities. As Michelson's emphasis on both the river and the Two Row Wampum in his piece helps to invoke, the river returns us to the Two Row Wampum, to the necessity of shared relationships along the river's banks, and the social relationships to land and water, the political and legal orders, and the sovereignty of the Haudenosaunee, which often has been negated and suppressed through subsequent generations of settler colonialism.

## Implementing Indigenous Water Law

While the Two Row Wampum represents just one of many Indigenous treaties that offer a means to engage with Indigenous nations over shared lands and waters in ways that assert the significance and force of Indigenous sovereignty and law, its scope extends much further than the Grand River. The Haudenosaunee live in fifteen different communities between Canada and the United States. Ransom and Ettenger elaborate:

The Mohawk Nation, or People of the Flint, are located in New York State, Ontario, and Quebec, and its Council fire resides at Akwesasne. The Oneida Nation, or People of the Standing Stone, are located in New York State, Wisconsin and Ontario. The Onondagas are located in central New York State and Ontario. The Cayuga Nation has no land base of its own, but the Cayuga people make their home amongst the other Nations of the Haudenosaunee. The Tuscaroras are less known to Haudenosaunee history. They are located in western New York State and Ontario. The Senecas are located in western New York State, Oklahoma, and Ontario. (2001, 221)

With the Two Row Wampum as the foundational treaty intended to structure relations between these Haudenosaunee nations and the surrounding settler communities and nations more broadly, the philosophy, law, and diplomacy that the Two Row conveys should serve as the organizing principle for a large and densely populated portion of Turtle Island. Ransom and Ettenger further highlight how “In 1987, the US Senate even passed a resolution acknowledging the contributions of the Haudenosaunee to the development of the United States Constitution. In particular, the Resolution cites the concepts, principles, and governmental practices of the Haudenosaunee” (222). So it is not that there are no Indigenous legal orders through which to organize relations on shared lands and water—which is to say, all lands and waters in the context of the settler nation state; it is, rather, that these laws, treaties, philosophies, and worldviews have been

denied material force and jurisdictional power under the conditions of the settler state. As Mackey notes, “the attainment of ontological certainty of some has been secured at great costs to others, through relations of domination and oppression” (2016, 132).

I have chosen to conclude this dissertation by focusing on the Kaswentha because its breadth and prevalence undermines this ontological certainty. It stands as one of the oldest and most oft-discussed treaties on Turtle Island. By returning to this foundational treaty, one that serves as an assertion of Indigenous law and autonomy that necessitates mutually beneficial, respectful, and responsible relationships between Indigenous and settler signatories in a shared space, I return to what must be understood as the guiding principles for relationships with water on these lands now called Canada. As Mackey asserts, “Treaties, as conceptualized in Indigenous theory, offer a legal and moral rationale for sharing decolonizing labour”; she continues, “Indigenous versions of treaties and sovereignty are also theories: they have epistemologies embedded and elaborated within them and embody important and sophisticated theorizations of how to know, understand and live in the world” (133). Importantly, Mackey adds, “These theorizations are not invitations to become Indigenous, or to see like an Indigenous person. They are invitations to be(come) responsible, by learning how to listen and respond appropriately as partners in particular treaty relationships” (133). In the context that I have been discussing, the Two Row Wampum reminds communities along the Grand River and beyond of their commitments to both the shared waters and to each other.

The “learning how to listen” that Mackey draws our attention to here must be understood as the foundation of Indigenous rights legibility in the settler state. Learning how to listen to and become responsible *within* the Indigenous legal frameworks and

treaty agreements that predate the Western common law and jurisdictional powers of the settler state is where the decolonizing of Indigenous water worlds must begin. It is within these treaties and the Indigenous worldviews that undergird them that Indigenous water worlds have existed, are made, and will be remade. The relationships that such treaties emphasize force the question of what the settler's role will be in this process of rebuilding. Will that role be one of continued ontological certainty and superiority that perpetuates the illegibility of Indigenous rights and further fosters the conditions for the unmaking of Indigenous water worlds? Or can settlers' role be one of committed and responsible listener/responder/partner, who begin to attend to the problem space of ontology and the political interactions between distinct societies? Can this be a relationship wherein settler society begins to do the work of grappling with the legibility of Indigenous water rights on their own terms, as they emerge through and within the Indigenous worldviews, legal orders, and treaties that organize Indigenous relationships to their territories and to the (settler) communities with which they interact? As Michelson's piece invokes, grappling with legibility means learning to listen, to hear the different voices that interact in a shared space, to understand the different histories that come to constitute a given place and our relations to water within that place; it means unlearning the settler logics of possession that presume ontological certainty, to draw from Mackey. Grappling with legibility means deferring mastery and totalizing logics that obfuscate and undermine the pre-existing laws and treaties that are intended to organize our relations on Indigenous lands; it means reading those treaties for what they express about relationality, jurisdiction, and Indigenous sovereignty.

More than simple engagement with the problem of legibility, however, will be required if we are to address the material conditions that continue to threaten the proliferation of Indigenous water worlds. This engagement must extend to attending to settler's roles and responsibilities in these relationships in ways that take seriously the necessity of dismantling the settler logics of possession that have caused such destruction to Indigenous water worlds and which continue to delimit the legibility of Indigenous rights, legal orders, and sovereignty. This means attending to settler social relations to water in ways that cannot be premised on property, capitalist utility, or settler colonial futurity. In essence, a commitment to decolonizing hydrosocial relations and to fostering the conditions for the remaking of Indigenous water worlds means a consideration of what the settler state and settler subjects must give up—of the jurisdictional powers that must be relinquished over lands, waters, and peoples in ways that allow for the organizing principles of Indigenous law to be given voice and material and jurisdictional force in determining the kinds of worlds made in these shared lands.

To be sure, assertions of Indigenous law are happening in a multitude of ways across Canada. I have investigated several sites where the conditions under which Indigenous legal orders might be articulated are subjected to the logics of settler colonial hydrosocial relations and the material conditions they perpetuate. I have also tried to show how Indigenous water worlds persist in ways that illustrate the strength and resilience of Indigenous worldviews and legal orders on Turtle Island. Val Napoleon asserts that “the Canadian state is not going away and the past cannot be undone. This means that Indigenous peoples must figure out how to reconcile former decentralized legal orders and law with a centralized state and legal system” (15). I would extend

Napoleon's claim here to suggest that settler Canadians and the settler state must also figure out how to reconcile themselves and their own legal orders with those of Indigenous peoples—that the Canadian state in its current form is not unmoveable, nor impervious to a change in how power relations are constituted in lands that are necessarily shared. Water emphasizes the necessary relationality of these power relations, that they are never quite fixed; water carries settler violence, pollution, and the material impositions of settler infrastructure onto Indigenous lands, but also the Indigenous kinship relations, worldviews, the power of Indigenous women, and the laws that organize Indigenous rights and sovereignty. Water is the means by which the settler state is always at risk of being undermined, and through which Indigenous worlds are always in the process of being remade

While I cannot offer, in concrete terms, how the profound material and social conditions could be met for the remaking of Indigenous water worlds, I have offered several sites of conflict that I have argued demand a sustained, decolonial engagement with the problem space of political ontology and how struggles around water gets us to this problem space—to a space of necessary interaction and conflict between distinct ontologies, the water worlds they construct, and the ways in which some constructions threaten and destroy others. While the ontological certainty upon which the settler state is premised may be fundamental for maintaining and extending state power, along with the security of property, and maintenance of extractive relations to nature that state power gives force to, water ensures that state power is never quite self-sufficient, never quite certain, and always in relation with those water worlds that settler hydrosocial relations aim to undermine. Water has been the site that demands attention to a renewed

relationship between settler and Indigenous water worlds. It is the site that demands a rethinking of our social relations as ones that might be premised on different ways of knowing, and of organizing ourselves along a shared resource that necessitates different kinds of relationships to it and to each other. Water is thus the problem space of settler colonialism, of jurisdictional power, of ontological certainty; however, it also is the problem space decolonization, where the settler state must confront its limits amidst the remaking of Indigenous water worlds. So long as the waters flow throughout Turtle Island, so too does this problem space, ensuring that power of settler colonialism is never quite certain, fixed, or stable, and that Indigenous water worlds are always being remade within and against the constraints of settler colonialism.

### **Concluding Thoughts**

It is no mistake that I conclude this project where it began: along the banks of the Grand River. As the region where I grew up, this is the watershed that I have been trying to ground my own thinking in and which necessitates that I attend to the relationships in the region, the ways I am implicated in the histories and politics that continue to structure how the river is understood and engaged by settler society, and how this engagement delimits the meaning of these waters for the Haudenosaunee. The Two Row Wampum is the treaty that must organize my own thinking and political interaction in this territory that my family still lives in. While this has not been a project explicitly about my own experiences with water or the relationships necessitated by it, I am of course implicated in the settler colonial hydrosocial relations I discuss throughout; the problem of legibility

and the political space of ontology facilitated by water is one that I must reckon with, learn how to read and understand, while I learn the limits and constraints of my own thinking around and relationships to water. This dissertation has been an attempt at beginning to do some of this engagement by examining the large-scale processes of settler colonialism and the ways they organize and construct water in the settler state, while delimiting and making illegible, or actively destroying, the meaning of Indigenous relations to and constructions of water. I conclude along the Grand River, then, as a small gesture of the work I hope to commit myself to with a new understanding of these processes in mind.

To be sure, the potential of settler commitments to decolonize waters on Turtle Island has largely been absent from this dissertation. While much of this dissertation has unfolded through the apparent dichotomous relationship between settler Canadians and Indigenous peoples—whether expressed through literature, policy and law, or the material conditions that often put Indigenous and settler worldviews in opposition to one another—it has not been my aim to portray these relationships generally, as always or necessarily in opposition. Even as Indigenous and settler have been useful analytic categories for understanding the large-scale processes that subjugate certain populations and their corresponding ontologies to the will and power of others, they of course cannot capture the complexities of Indigenous and non-Indigenous relationships on the ground—between those allies who support Indigenous rights in various ways, or between Indigenous and other marginalized peoples; these categories cannot always account for the competing and contradictory experience that shape one’s world within the settler colonial landscape, whether settler or Indigenous. To be sure, this has not been a project

as concerned with the myriad of individual subjective experiences in the settler state, as much as it has been interested in understanding the power structures that shape or overdetermine these experiences and relationships through legal, political, and material conditions. However, as I consider the problem space of political ontology, and the ways in which multiple ontologies might relate and interact within a given political space, it is useful to complicate the rigidity of these broader categories.

This project thus opens up toward a consideration of the various ways that this problem space is already being navigated and negotiated. The allied commitments and poetic work of Rita Wong, her work with the Tar Sands Healing Walk, her 2015 collection of poetry *undercurrents*, and her 2017 collection of essays edited with Dorothy Christian, *downstream*, immediately come to mind as sites of further investigation for what decolonial engagement with the problem space of political ontology and water's facilitation of it might look like. Wong's commitments to understanding her own relation to the watersheds she inhabits, as well the meaning of these places for Indigenous peoples serve as useful examples of what decolonial engagement with shared waters might look like. Further, recent collective movements to have water given the legal status of or similar to that of a human person in places like Aotearoa/New Zealand and India, mark changing conceptions of water on large scales that might suggest at least a common understanding of its necessity for all peoples (Cheater 2018). While such legal claims require further investigation in relation to Indigenous rights and legal orders, these environmental movements represent a commitment to better understanding dominant hydrosocial relations in ways that might better serve Indigenous and non-Indigenous peoples alike.

The work I have done in this dissertation, the late liberal modes of governance and subjectification that are often positioned as well-intentioned, but which ultimately do not alter the material conditions that continue to undermine the assertion of Indigenous peoples' inherent rights around water prompts me to be cautious about large-scale movements as well as the commitments of settler allies. However, as these examples, and many more illustrate, much work is required in order to understand the potential for the co-constitution of settler and Indigenous water worlds, and first and foremost, for a co-constitution that is decolonial. This project has laid some of the groundwork for investigating these questions, their limits and potential, and for understanding what the remaking of Indigenous water worlds is up against in the context of the settler state, how Indigenous legal orders and hydrosocial relations have persisted, and what might be required for the decolonial co-constitution of settler and Indigenous water worlds.

What this project has illustrated, in part, is that water may indeed possess the potential to challenge our current ways of knowing in relation to each other and to the environment—it may serve as the fundamental site that demands attention to these relationships. But, what this project has also shown is that how we respond to what water does is heavily mediated by the social, political, legal, and historical contexts of our various communities. At our current political and ecological juncture, we may only be left with common acknowledgement that things are not working in their current form. The banks through which the Grand River flows, for example, are too often perceived as rigid. They are fixed, sedimented, and historically grounded in the lived material effects that their fixity perpetuates. What is required, then, is a decolonized political relation that might begin to let the water do the work of eroding these rigid banks.



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